167-548

TRANSCRIPT OF RECORD.

167-546

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 631

CHARLES H. BAUMAN, JOHN H. JOLLY, CHARLES G. SHOEMAKER, ANNIE H. PANGHORN, EDMUND N. WOODRUFF, HERBERT H. KIMBALL, JAMES H. HENSLEY, AND FRANK B. NOYES, APPELLANTS,

vs.

JOHN W. ROSS, GEORGE TRUESDELL, AND CHARLES F. POWELL, COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

No. 632

JOHN W. ROSS, GEORGE TRUESDELL, AND CHARLES F. POWELL, COMMISSIONERS OF THE DISTRICT OF COLUMBIA, APPELLANTS,

vs.

CHARLES H. BAUMAN, JOHN H. JOLLY, CHARLES G. SHOEMAKER, ANNIE H. PANGHORN, EDMUND N. WOODRUFF, HERBERT H. KIMBALL, JAMES H. HENSLEY, AND FRANK B. NOYES.

APPEALS FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED Oct. 17, 1896.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. .

CHARLES H. BAUMAN, JOHN H. JOLLY, CHARLES G. SHOEMAKER, ANNIE H. PANGHORN, EDMUND N. WOODRUFF, HERBERT H. KIMBALL, JAMES H. HENSLEY, AND FRANK B. NOYES, APPELLANTS,

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APPEALS FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia

CHARLES H. BAUMAN *et al.*, Appellants,
vs.
JOHN W. ROSS *et al.*, Commissioners of the District of Columbia,

and

JOHN W. ROSS *et al.*, Commissioners of the District of Columbia, Appellants,
vs.
CHARLES H. BAUMAN *et al.*

a In the Supreme Court of the District of Columbia.

In Re Suburban Subdivision Known as Ingleside Subdivision by Chapin Brown, in the District of Columbia, Included within Section 1 of the Plan for the Extension of a Permanent System of Highways in the District of Columbia. No. 453, District Court.

UNITED STATES OF AMERICA,
District of Columbia.

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Petition of the Commissioners of the District of Columbia for Condemnation Proceedings.*

Filed September 27, 1895.

In the Supreme Court of the District of Columbia, Sitting as a District Court of the United States for said District.

In Re Suburban Subdivision Known as Ingleside Subdivision by Chapin Brown, in the District of Columbia, Included within Section 1 of the Plan for the Extension of a Permanent System of Highways in the District of Columbia. 453.

To the supreme court of the District of Columbia, sitting as a district court:

The petition — John W. Ross, George Truesdell, and Charles F. Powell, Commissioners of the District of Columbia, respectfully shows to the court as follows:

1.

That Congress by its act approved March 2, 1893, authorized and directed these petitioners, the Commissioners of the District of Columbia, to prepare a plan for the extension of a permanent system of highways over all that portion of the District not included in the limits of the cities of Washington and Georgetown, said system to be made as near in conformity to the street plan of the city of Washington as said Commissioners should deem advisable and practicable; and thereafter Congress, by its act approved March 2,
1895, authorized these petitioners, the Commissioners afore-
2 said, to make such minor and essential changes in existing subdivisions made in compliance with its act to regulate the subdivision of land within the District, approved August 27, 1888, as the said Commissioners should deem advisable and practicable for the purpose of connecting subdivisions and for a better conformity to the general plan of the city of Washington.

2.

These petitioners, who are the Commissioners of the District of Columbia, proceeded with the preparation of a plan for the aforesaid extension of a permanent system of highways, such plan being prepared in sections, as contemplated by said act of Congress of March 2, 1893, and they prepared, adopted, and duly certified to the commission provided for in section 2 of said act of March 2, 1893, a copy of the map of section 1 of said plan for the extension of a permanent system of highways.

3.

That said map has been returned to these petitioners with the approval of a majority of the commission provided for in said act, and said map, approved, was on August 31, 1895, filed and recorded in the office of the surveyor of the District of Columbia, as required by said act of Congress, and the same now remains in the office of the said surveyor.

4.

That said map so filed and recorded shows accurately the boundaries and dimensions of and number of square feet in the streets, avenues, and roads established by your petitioners, Commissioners aforesaid; the boundaries and dimensions of and number of square
feet in each of the then existing highways in the area cov-
3 ered by said map, and the boundaries and dimensions and number of square feet in each lot of suburban subdivisions within the area covered by said map owned by private persons, and said map also contains such explanations as are necessary to a complete understanding of the same, and is in all respects in compliance with the requirements of the said act of Congress.

5.

That the suburban subdivision known as Ingleside, subdivision

by Chapin Brown, in the District of Columbia, was an existing subdivision on and prior to August 31, 1895.

6.

That the aforesaid map of section 1 of the plan for the permanent system of highways prepared by your petitioners and filed and recorded as aforesaid lays out and alters existing highways and makes certain so-called reservations and public spaces in the said subdivision of Ingleside, subdivision by Chapin Brown, and dispenses with certain highways and parts of highways in said subdivision as follows: For extending 19th street through block 4; for extending Ingleside terrace through blocks 4 and 5; for widening 19th street, Lowell street, 17th street, Columbus avenue, Howard avenue, and Ingleside terrace; for a reservation at the intersection of 17th and Lowell streets; for dispensing with a part of Lowell street and Ingleside terrace, all of which fully and in detail appears by reference to a copy of so much of the material portions of said map of section 1 as embraces said subdivision, which is herewith filed and marked "Commissioners' Ex. No. 1," which is prayed to be taken and considered as a part hereof.

4 Wherefore your petitioners pray that this honorable court will proceed to condemn permanent rights of way for the public over all the land lying within the limits of the subdivision known as Ingleside, subdivision by Chapin Brown, not already owned by the United States or the District of Columbia, or already dedicated to public use as a highway, as described on the map, Commissioners' Exhibit No. 1, aforesaid, in the manner provided for in said act of Congress of March 2, 1893.

2.

That public notice, as required by said act, be given to all persons having any interest in the proceedings to attend the court at a date to be named in said notice, and to continue in attendance until the court shall have made a final order in the premises.

3.

That after such notice the court shall cause a jury to be summoned, as provided in the said act.

4.

That such other and further orders may be passed as are contemplated by the said act, to the end that the aforesaid permanent rights of way for the public over the said land may be obtained and secured.

5.

And for such other and further proceedings and relief in the

premises as is contemplated by the said act of Congress of March 2, 1893; and they will ever pray, etc.

JOHN W. ROSS,
GEORGE TRUESDELL,
CHAS. F. POWELL,
Commissioners of the District of Columbia.

S. T. THOMAS,
A. B. DUVALL,
Attorneys for Petitioners.

(Here follows map marked page 5.)

6 *Order Giving Public Notice of Application for Condemnation of Rights of Way.*

Filed October 2, 1895.

In the Supreme Court of the District of Columbia, Sitting as a District Court of the United States for the said District.

In Re Suburban Subdivision Known as Ingleside Sub. by Chapin Brown, in the District of Columbia, in "Section One" of the Map of Permanent System of Highways. No. 453.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to section 6 of an act of Congress approved March 2, 1893, entitled "An act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities," have filed a petition in this court praying the condemnation of a permanent right of way for the public over all the land lying within the limits of said subdivision not already owned by the United States or the District of Columbia, or dedicated to public use as a highway, which is included within the highways or reservations laid out by said Commissioners on the map known as "section one" of the plans for a permanent system of highways provided for by said act of Congress.

The map prepared by said Commissioners, known as "section one," dispenses with certain highways and parts of highways and opens up others in said subdivision, viz: For extending 19th
7 street through block 4; for extending Ingleside terrace through blocks 4 and 5; for widening 19th street, Lowell street, 17th street, Columbus avenue, Howard avenue, and Ingleside terrace; for a reservation at the intersection of 17th and Lowell streets; for dispensing with a part of Lowell street and Ingleside terrace.

A copy of so much of said map as shows the proposed changes is on file in cause for the information of all concerned. It is ordered this 2nd day of October, 1895, that all persons interested in the proceedings be, and they are hereby, required to appear in this court on or before the 15th day of November, 1895, and show cause, if any they have, why the prayer of said petition should not be granted, and why this court should not proceed as directed by said act of

Congress: Provided, that a copy of this order be published in the Evening Star and the Washington Post newspapers at least six times, and in the Washington Law Reporter once before said 15th day of November, 1895.

By the court:

W. S. COX, *Justice.*

8 *Notice of Condemnation of Lands for Public Highways.*

Filed July 2, 1896.

Supreme Court, District of Columbia.

Ingleside Sub. by Chapin Brown. No. 453.

Affidavit.

DISTRICT OF COLUMBIA, *To wit:*

Personally appeared before me, a notary public in and for said District, M. W. Moore, well known to me to be the manager of "The Washington Law Reporter," a weekly journal printed and published in the city of Washington and District aforesaid, and made oath in due form of law that the annexed notice was published in said journal once a week for three successive weeks, as per certificate in the margin hereof.

Witness my hand and official seal this 15 day of October, 1895.

HERBERT M. LOCKE,

[SEAL.] *Notary Public, D. C.*

In the Supreme Court of the District of Columbia, Sitting as a District Court of the United States for the said District.

In Re Suburban Subdivision Known as Ingleside Sub. by Chapin Brown, in the District of Columbia, in "Section One" of the Map of Permanent System of Highways. No. 453.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to section 6 of an act of Congress approved March 2, 1893, entitled "An act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities," have filed a petition in this court praying the condemnation of a permanent right of way for the public over all the land lying within the limits of said subdivision not already owned by the United States or the District of Columbia, or dedicated to public use as a highway, which is included within the highways or reservations laid out by said Commissioners on the map known as "section one" of the plans for a permanent system of highways provided for by said act of Congress.

The map prepared by said Commissioners, known as "section one," dispenses with certain highways and parts of highways
9 and opens up others in said subdivision, viz: For extending 19th street through block 4; for extending Ingleside terrace

through blocks 4 and 5; for widening 19th street, Lowell street, 17th street, Columbus avenue, Howard avenue, and Ingleside terrace; for a reservation at the intersection of 17th and Lowell streets; for dispensing with a part of Lowell street and Ingleside terrace.

A copy of so much of said map as shows the proposed changes is on file in the cause for the information of all concerned. It is ordered this 2d day of October, 1895, that all persons interested in the proceedings be, and they are hereby, required to appear in this court on or before the 15th day of November, 1895, and show cause, if any they have, why the prayer of said petition should not be granted and why this court should not proceed as directed by said act of Congress:

Provided, that a copy of this order be published in the Evening Star and the Washington Post newspapers at least six times, and in the Washington Law Reporter once before said 15th day of November, 1895.

By the court:

(Signed) W. S. COX, *Justice.*

A true copy.

Test.

[SEAL.] JOHN R. YOUNG, *Clerk.*

I hereby certify that the foregoing legal notice was printed and published in the regular issue of "The Washington Law Reporter" bearing date October 10, 1895.

M. W. MOORE,

Gen'l Manager of the Law Reporter Co. of Washington City.

WASHINGTON, D. C., *Oct.* 15, 1895.

Commissioners of D. C. to the Law Reporter Company of Washington City, Dr.

Office of publication, 518 Fifth street N. W.

10 For publishing the annexed legal notice in "The Washington Law Reporter" once a week for three successive weeks $8 10

Received payment for the company,

——— ———.

Answer of Henry H. Kimball.

Filed November 23, 1895.

In the Supreme Court of the District of Columbia, Sitting as a District Court of the United States.

In Re Subdivision Known as Ingleside Subdivision by Chapin Brown, in the District of Columbia, in "Section One" of the Map of Permanent System of Highways. No. 453.

Now comes Henry H. Kimball, one of the persons interested in the proceedings in the above-entitled cause, and, by Chapin Brown

and Arthur H. O'Connor, his attorneys, appears pursuant to rule of this court, issued herein on the 2nd day of October, A. D. 1895, and says that he is the owner of lot four (4), in block six (6), of the said subdivision, being the grantee by deed from James H. Hensley, the former owner of said lot and who has already appeared herein pursuant to said rule of court; and for cause why the prayer of the petition filed herein should not be granted and why the court should not proceed as directed by the act of Congress in said rule mentioned respectfully shows:

11 1.

That said act of Congress in said rule mentioned is in violation of article five (5) of the amendments of the Constitution of the United States and is void, in that the said act makes no provision for the payment of just compensation to the owner for the taking for public use of the private property involved in these proceedings.

2.

That the things to be done under the said act of Congress are, and the purpose of the same is, for the benefit of the general public in the District of Columbia, and the provision in said act requiring one-half of the expense and cost thereof to be assessed upon property to be found by the jury in said act provided for to be benefited thereby is in violation of article five (5) of the amendments of the Constitution of the United States and is void.

3.

That all of the provisions of said act of Congress are vague and uncertain and incapable of enforcement at law and therefore void.

CHAPIN BROWN,
ARTHUR H. O'CONNOR,
Attorneys for Respondents.

12 *Answer of Charles H. Bauman et al.*

Filed November 15, 1895.

In the Supreme Court of the District of Columbia, Sitting as a District Court for the United States.

In Re Subdivision Known as Ingleside Subdivision by Chapin Brown, in the District of Columbia, in "Section One" of the Map of Permanent System of Highways. No. 453.

Now come Charles H. Bauman, James H. Hensley, Charles G. Shoemaker, Edmund W. Woodruff, and John H. Jolly, all being persons interested and together constituting all of the persons who are interested in the proceedings in the above-entitled cause, and by Chapin Brown and Arthur H. O'Connor, their attorneys, appear pursuant to the rule of the court issued herein on the 2nd day of

October, 1895, and say that they are the owners of all of the land involved in these proceedings and embraced in the said subdivision, and for cause why the prayer of the petition filed herein should not be granted and why the court should not proceed as directed by the act of Congress in said rule mentioned respectfully do jointly and severally show:

1.

That said act of Congress in said rule mentioned is in violation of article five (5) of the amendments of the Constitution of the United States and is void, in that the said act makes no provision for the payment of just compensation to the owners for the taking for
13 public use of the private property involved in these proceedings.

2.

That the things to be done under the said act of Congress are, and the purpose of the same is, for the benefit of the general public in the District of Columbia, and the provision in said act requiring one-half of the expense and cost thereof to be assessed upon property to be found by the jury in said act provided for to be benefited thereby is in violation of article five (5) of the amendments of the Constitution of the United States and is void.

3.

That all of the provisions of said act of Congress are vague and uncertain and incapable of enforcement at law and therefore void.

CHAPIN BROWN,
ARTHUR H. O'CONNOR,
Attorneys for Respondents.

Order for Jury.

Filed December 13, 1895

In the Supreme Court of the District of Columbia, Sitting as a District Court of the United States.

In Re Subdivision Known as Ingleside Subdivision by Chapin Brown, in the District of Columbia, in "Section One" of the Map of Permanent System of Highways. No. 453.

Upon consideration of the petition of the Commissioners of the District of Columbia, filed herein on the 27th day of Septem-
14 ber, A. D. 1895, and it appearing to the court that due publication has been had of the order of this court passed herein on the 2nd day of October, A. D. 1895, requiring that all persons interested in these proceedings appear in this court on or before November 15th, 1895; and it further appearing to the court that each and all of the owners of the land sought to be condemned by these proceedings, except Annie H. Pangburn, have caused their appearance to be entered herein; and it further appearing to the

court that the said Annie H. Pangburn is the owner of lot 5, in block 1, of the above-mentioned subdivision, a part of which lot is sought to be condemned by these proceedings, and that she, the said Annie H. Pangburn, is a resident of the State of New York and is not within the District of Columbia, and that personal service upon her of notice of these proceedings is impracticable, it is, this 13th day of December, 1895, ordered that the United States marshal for the District of Columbia be, and he is hereby, directed to summon a jury of seven judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, to appear in this court on Wednesday, the 18th day of December, 1895, at 10 o'clock a. m. of said day.

W. S. COX, *J.*

Marshal's Return.

Dec. 16, 1895.—Pursuant to the within order, summoned personally the following-named jurors, viz: Louis D. Wine, John E. Herrell, John S. Swormstedt, Joseph A. Settle, William B. Holtzclaw, J. McLean Carusi, and Philip M. Snowden.

ALBERT A. WILSON, *Marshal.*

Proceedings.

WEDNESDAY, *December* 18, 1895.

The court resumes its session pursuant to adjournment, Cox, justice, presiding.

In Re Ingleside Subdivision. Condemnation. No. 453, Dist. Court.

Comes here now the petitioners, by their attorneys, and the respondents, by their attorneys; whereupon comes a jury of seven judicious, disinterested men, not related to any person interested in the proceedings and not in the service or employment of the District of Columbia or of the U. S., summoned by the marshal as per order of this court, to wit, John E. Herrell, Louis D. Wine, John S. Swormstedt, Wm. B. Holtzclaw, Philip M. Snowden, Joseph A. Settle, and J. McLean Carusi, who are by the court sworn, without favor or partiality to any one, to the best of their judgment, to determine such questions as may be submitted to them by the court during the proceedings, are respited until the regular meeting of the court tomorrow.

The motion of the owners of the property in this subdivision, which motion is duly filed, to dismiss the proceedings in this cause are by the court overruled; to which the respondents except.

16 *Motion by Owner to Dismiss Proceeding.*

Filed December 24, 1895.

In the Supreme Court of the District of Columbia, Sitting as a District Court of the United States for said District.

In Re Suburban Subdivision Known as Ingleside Subdivision by Chapin Brown, in the District of Columbia, Indicated within Section One of the Plan for the Extension of a Permanent System of Highways in the District of Columbia.

Now come the owners of the pieces or parcels of ground described in the plat attached to and made a part of the petition in this case, and by their attorneys move that the jury be discharged and this proceeding dismissed, and assign the following grounds for this motion:

1.

It is shown by said petition and by the evidence taken herein that, the plan for the extension of a permanent system of highways in the District of Columbia in respect of section one having been duly approved by the Commissioners of the District of Columbia, a map of said section one was made in pursuance of the requirements of the act of Congress referred to in this proceeding as the act of March second, eighteen hundred and ninety-three, and, after being approved in writing by the commission created by said act, was returned to the said Commissioners of the District of Columbia and was by them filed in the office of the surveyor of the District of Columbia, and was duly recorded in the office of the said surveyor on the 31st of August, A. D. 1895.

17 When the said map was recorded as aforesaid it thereupon became and was unlawful under the terms of said act to admit to record in the office of the said surveyor or of the recorder of deeds of the District of Columbia any other or further subdivision of the land included in said map unless with the approval of the said Commissioners of the District of Columbia and in conformity to said map.

When said map was recorded as aforesaid it thereupon became and was unlawful under the terms of said act for said Commissioners or any other officer or person representing the United States or the District of Columbia to thereafter improve, repair, or assume any responsibility in regard to any abandoned highway within the area covered by said map.

The said map of section one so recorded as aforesaid includes the pieces or parcels of ground known and described and appearing on the books and records of the surveyor's office as Ingleside subdivision, by Chapin Brown, in the District of Columbia, and described in the plat attached to and made part of the petition in this case.

The said plat attached to said petition shows the lots and parts of lots taken or proposed to be taken and condemned for the highways and reservations described in said plat.

The filing and recording of the said map in the office of the surveyor of the District of Columbia constituted in contemplation of law and was in fact the taking for public use of those lots and parts of lots described in said map as within the limits of proposed highways and reservations. The lots and parts of lots last aforesaid so within the limits of the said proposed highways were by reason of and under the provisions of said act of Congress taken for public
18 use on the said 31st day of August, 1895. No compensation was then or has since been made therefor. No just compensation for such taking is provided for by said act or by any act of Congress.

2.

If the filing and recording of said map as aforesaid shall be held not to constitute the actual taking of said part of said lot for public use, then no time is fixed or provided by said act when the taking shall be considered as completed, and no provision is made by said act of Congress or by any act of Congress for compensation to be made when said taking is actually made or completed.

3.

It is provided by the eighteenth section of said act that in case the court shall enter judgment of condemnation in any case and appropriation is not made by Congress for the payment of such award within the period of six months, Congress being in session for that time after such award, or for the period of six months after the meeting of the next session of Congress, the proceedings shall be void and the land shall revert to the owners, but it is not provided by said act that in the event of failure of Congress to make such appropriation the plan for the said extension of a permanent system of highways adopted as hereinbefore stated and the map of said section one so approved as aforesaid and filed and recorded in the office of the surveyor of the District of Columbia on the 31st of August, 1895, as aforesaid, shall become inoperative, void, and of no effect; on the contrary, the said plan and the said map so recorded as aforesaid remain and are in full force and effect, and the said map of said section one may be again filed and marked
19 and a new proceeding may thereupon be instituted similar to this proceeding for the condemnation of the pieces or parcels of land or the use thereof described in said map as within the limits of said proposed extensions of said streets and highways, and the repetition of such proceedings with reference to said map and the pieces and parcels of ground described in the plat attached to the petition filed in this case may be continued indefinitely, in violation of the rights and to the great and irreparable injury of all owners of the pieces and parcels of ground described in said plat.

4.

It is not within the power of Congress to enact or provide that in cases where the use of a part only of a tract or parcel of land is to be condemned, as in the case of certain of the lots described in the

petition in this case, the jury in assessing damages therefor shall take into consideration the benefit the purpose for which it is taken may be to the owner or owners of such tract or parcel by enhancing the value of the remainder of the same, and to require the jury to render their verdict accordingly.

5.

It is not within the power of Congress to enact or provide that, the amount justly due as damages for each highway or reservation or part thereof condemned and established under said act having been determined in the manner provided by the said act, one-half thereof shall be assessed against each parcel of land which the jury shall find to be so benefited according to its proper proportional part of the whole of said one-half of the damages.

20

6.

The owners of pieces and parcels of ground included within the limits of the streets and avenues described in the plat attached to the petition in this case and proposed to be taken for the extension of the streets and avenues in said plats are entitled to be compensated therefor in money which is a legal tender for the value of the pieces or parcels of ground so taken, and compensation cannot, without the consent of the owners thereof, be lawfully made therefor partly in money and partly in the estimated value of benefits that may result from the purpose for which said pieces or parcels of ground are to be taken.

7.

Section eleven of the said act approved August 31, 1895, provides in substance and effect that where the use of a part only of any parcel or tract of land shall be condemned the verdict of the jury in respect of damages shall be for the *difference* between the value of the land taken and the estimated benefits that will result to the remainder.

The aggregate amount of these verdicts makes up the sum of the damages determined to be due in respect of each highway or reservation or part thereof condemned.

Section fifteen of said act provides that *one-half* of the amount so ascertained shall be assessed against *each parcel* of land, wherever situated, which the jury shall find to be benefited by the laying out and opening of the proposed highways, and that the *other half* of said amount "shall be charged up to the revenues of the District of Columbia."

The revenues of the District of Columbia are obtained from taxes levied on real and personal property.

21 The effect of these provisions of the law is to impose a double burden upon all those pieces or parcels of ground in the District of Columbia which a jury may find to be benefited by the laying out and opening of any highway or reservation described in any of the proceedings instituted under the act of March 2, 1895.

Furthermore, under the provisions of said act the pieces or parcels of land benefited or supposed to be benefited by the laying out and opening of the highways and reservations thereby provided for can be assessed and charged with a proportionate share of the ascertained damages in every one of the cases or proceedings instituted or that may hereafter be instituted under said act, in violation of the rights and to the great and irreparable injury of the owners of said lots and parts of lots.

8.

The provisions of the law by which it is sought to charge not only parts of the lots actually taken for public use but all lots wherever situated in the District of Columbia with whatever benefits the jury may find can be conferred on them by the laying out and opening of the proposed highways are integral parts of the act, and if found to be in violation of the Constitution of the United States cannot be eliminated and the remainder of the provisions of the act preserved and carried into effect.

9.

No power is by the said act vested in the juries therein provided for to *injure* into or determine or to render a verdict for or in respect of the damages caused to the owners of abutting lots
22 by the abandoment of the streets and avenues marked as abandoned on the plat attached to the petition filed in this case.

10.

The act under which these proceedings were instituted and are being carried on is in its several provisions so uncertain and contradictory as to be impossible of execution, and is in other respects unconstitutional and void.

CHAPIN BROWN,
ARTHUR H. O'CONNOR,
Attorneys for Owners.

NATH'L WILSON, *Counsel.*

Motion to Discharge the Jury.

In the Supreme Court of the District of Columbia, Sitting as a District Court of the United States.

In the Matter of the Subdivision Known as Ingleside Subdivision.
No. 453, District Ct.

Now come the defendants in the above-entitled matter and move the court for leave to renew the motion heretofore made by them at the close of the testimony on behalf of the Commissioners of the

District of Columbia, for the discharge of the jury upon the grounds set forth in said motion.

CHAPIN BROWN,
ARTHUR H. O'CONNOR,
Attorneys for Defendants.

NATHANIEL WILSON,
Of Counsel & Att'y for Amer. Sec. & T. Co.

23 *Verdict of the Jury.*

Filed January 18, 1896.

In the Supreme Court of the District of Columbia, Sitting as a District Court of the United States for said District.

In Re Suburban Subdivision Known as Ingleside, Included within Section "One" of the Plan for the Extension of the Permanent System of Highways in the District of Columbia. No. 453.

The court hereby prescribes and directs to be submitted to the jury, the following form of verdict to be rendered by the jury in this case.

WALTER S. COX, *J.*

We, the jury in the above-entitled cause, hereby render the following verdict and award, as set forth in Schedules 1, 2, and 3, hereto annexed and made part hereof.

As witness our hands and seals this 18th day of January, A. D. 1896.

LOUIS D. WINE. [SEAL.]
JOHN E. HERRELL. [SEAL.]
J. S. SWORMSTEDT. [SEAL.]
W. B. HOLTZCLAW. [SEAL.]
P. M. SNOWDEN. [SEAL.]
JOSEPH A. SETTLE. [SEAL.]
J. McLEAN CARUSI. [SEAL.]

SCHEDULE 1.

Filed January 18, 1896. J. R. Young, clerk.

Description of the parcel.	Number of square feet in the parcel.	Number of square feet taken.	Number of square feet not taken.	Compensation for land taken.	Compensation for buildings taken.	Damages to remainder of the parcel, including damages to the buildings.	Benefits to the remainder of the parcel.	Award, being for compensation and damages less benefits.
Block 1, lot 1	6,550	500	6,050	$350	.....	.....	$350	
" " " 2	6,550	500	6,050	300	.....	.....	300	
" " " 3	6,550	500	6,050	250	.....	.....	275	
" " " 4	6,550	500	6,050	250	.....	.....	250	
" " " 5	6,550	500	6,050	250	.....	.....	250	
" " " 6	6,550	500	6,050	250	.....	.....	250	
" " " 7	6,550	500	6,050	250	.....	.....	250	
" " " 8	6,550	500	6,050	250	.....	.....	250	
" " " 9	6,550	500	6,050	250	.....	.....	250	
" " " 10	8,232.6	905.1	7,327.5	271 53	.....	.....	271 53	
" " " 11	5,950	500	5,450	150	.....	.....	150	
" " " 12	5,950	500	5,450	150	.....	.....	150	
" " " 13	5,950	500	5,450	150	.....	.....	150	
" " " 14	9,571.9	1,843.15	7,728.75	737 26	.....	.....	368 63	$368 63
" " " 15	8,592.9	1,025.4	7,567.5	410 16	.....	.....	136 72	273 44
" 2, " 15	6,550	1,965	4,585	982 50	.....	.....	.....	982 50
" " " 16	6,550	2,490	4,060	1,245	.....	.....	.....	1,245 75
" " " 17	6,550	750	5,800	337 50	.....	.....	168 75	168 75
" " " 18	6,550	750	5,800	300	.....	.....	150	150
" " " 19	6,550	750	5,800	300	.....	.....	150	150
" " " 20	6,550	750	5,800	300	.....	.....	150	150
" " " 21	6,550	750	5,800	300	.....	.....	150	150
" " " 22	6,550	750	5,800	300	.....	.....	150	150

Schedule 1—Continued.

Description of the parcel.	Number of square feet in the parcel.	Number of square feet taken.	Number of square feet not taken.	Compensation for land taken.	Compensation for buildings taken.	Damages to remainder of the parcel, including damages to the buildings.	Benefits to the remainder of the parcel.	Award, being for compensation and damages less benefits.
Block 2, lot 23	6,550	750	5,800	$300			$150	$150
" " " 24	6,550	750	5,800	375			187 50	187 50
" " " 25	6,550	750	5,800	375			187 50	187 50
" " " 26	6,550	750	5,800	375			187 50	187 50
" " " 27	6,550	750	5,800	375			187 50	187 50
" " " 28	6,550	750	5,800	375			187 50	187 50
" " " 29	6,550	750	5,800	412 50			206 25	206 25
" " " 30	6,550	750	5,800	450			225	225
" 3, " 1	8,160.65	1,367.1	6,783.55	615 19			307 59	307 60
" " " 2	6,698.7	744.3	5,954.4	297 72			148 86	148 86
" " " 3	6,698.7	744.3	5,954.4	297 72			148 86	148 86
" " " 4	6,698.7	744.3	5,954.4	297 72			148 86	148 86
" " " 5	6,698.7	744.3	5,954.4	297 72			148 86	148 86
" " " 6	6,698.7	744.3	5,954.4	297 72			148 86	148 86
" " " 7	6,698.7	744.3	5,954.4	297 72			148 86	148 86
" " " 8	8,150.65	1,367.1	6,783.55	615 19			307 59	307 60
" " " 9	8,490.3	2,687.7	5,802.6	1,343 85			671 92	671 92
" " " 10	8,642.4	5.2	8,637.2	1 56			1 56	
" " " 12	8,642.4	5.2	8,637.2	1 56			1 56	
" " " 13	8,490.3	887.7	7,602.6	221 92			110 96	110 96
" " " 14	7,087.5	787.5	6,300	196 87			98 43	98 44
" " " 15	7,087.5	787.5	6,300	196 87			98 43	98 44
" " " 16	7,087.5	787.5	6,300	196 87			98 43	98 44
" " " 17	7,087.5	787.5	6,300	196 87			98 43	98 44
" " " 18	8,490.3	887.7	7,602.6	221 92			110 96	110 96

"	"	"	19	8,642.4		5.2	8,637.2	1	82				1	82	555	99		
"	"	"	22	8,490.3		2,021.8	6,468.5	1,111	99				5	56	555	99		
"	4,	"	1	6,220.93		453.6	1,684.93	544	32						544	32		
"	"	"	2	11,009.2		4,362.1	6,674.1	523	45				174	48	348	97		
"	"	"	3	9,780.46		2,434.1	7,346.36	292	09				97	36	194	73		
"	"	"	4	8,410.8		1,358.1	7,052.27	162	97				40	74	122	23		
"	"	"	5	8,410.8		872.6	7,538.2	104	71				26	18	78	53		
"	"	"	6	7,278		787.5	6,490.5	94	50				23	62	70	88		
"	"	"	7	7,278		787.5	6,490.5	94	50				23	62	70	88		
"	"	"	8	7,278		787.5	6,490.5	94	50				23	62	70	88		
"	"	"	9	7,278		787.5	6,490.5	94	50				23	62	70	88		
"	"	"	10	8,410.8		872.6	7,538.2	104	71				26	18	78	53		
"	"	"	11	8,410.8		1,358.1	7,052.7	162	97				40	74	122	23		
"	"	"	12	8,410.8		2,434.1	5,976.7	292	09				97	36	194	73		
"	"	"	13	8,410.8		4,756.2	3,653.9	570	82				190	27	380	55		
"	"	"	14	11,564.5		10,383.4	1,181.1	1,246							1,246			
"	"	"	15	10,382.9		7,230.8	3,152.1	867	69						867	69		
"	"	"	16	10,901		4,362.1	6,538.9	654	31				218	10	436	21		
"	"	"	17	9,298.4		2,434.1	6,864.3	486	82				162	27	324	55		
"	"	"	18	8,410.8		1,358.1	7,052.7	339	52				113	17	226	35		
"	"	"	19	8,410.8		872.6	7,538.2	218	15				72	72	145	43		
"	"	"	20	7,026.75		750	7,276.75	187	50				62	50	125			
"	"	"	21	7,217.25		750	6,467.25	225					75		150			
"	"	"	22	7,407.75		750	6,657.75	225					75		150			
"	"	"	23	7,598.25		750	6,848.25	225					75		150			
"	"	"	24	7,788.75		750	7,038.75	225					75		150			
"	"	"	25	7,182.75		750	6,332.75	262	50				87	50	175			
"	"	"	26	5,480.25		750	4,730.25	300					100		200			
"	"	"	27	13,662.7		3,410.2	10,252.5	1,534	59				511	53	1,023	06		
"	"	"	28	5,480.25		500	4,980.25	125					125					
"	"	"	29	7,082.8		520.8	6,562	104	16				104	16				
"	"	"	30	12,401.5		2,138	10,263.5	427	60				427	60				
"	"	"	31	7,788.75		65.6	7,723.15	9	84				9	84				
"	5,	"	1	9,334.7		2,081.7	6,533	700	42						700	42		
"	"	"	6	9,272	25	1,027.35	8,244.9	102	73				102	73				
"	"	"	7	9,259.75		6,380.15	2,879.6	638	01						638	01		
"	"	"	8	9,247	25	8,070.05	1,177.2	807							807			
"	6,	"	1	7,936.96		754.2	7,182.76	565	65				565	65				
"	"	"	3	6,498.5		269.6	6,228.9	161	76				161	76				

Schedule 1—Continued.

Description of the parcel.	Number of square feet in the parcel.	Number of square feet taken.	Number of square feet not taken.	Compensation for land taken.	Compensation for buildings taken.	Damages to remainder of the parcel, including damages to the buildings.	Benefits to the remainder of the parcel.	Award, being for compensation and damages less benefits.
Block 6, lot 4	6,210.9	463.5	5,747.4	$278 10	....	....	$278 10	$1,403 65
" " 5	6,210.9	463.5	5,747.4	278 10	....	....	278 10	2,571 80
" " 6	6,210.9	463.5	5,747.4	324 45	....	....	324 45	....
" " 15	9,362.3	2,807.3	6,555	1,403 65	....	....	....	....
Reservation A	2,857.56	2,857.56	....	2,571 80	....	....	....	....
				$36,736 73			$14,239 19	$22,497 54

25 SCHEDULE 2.

Filed January 18, 1896. J. R. Young, clerk.

Appraisement of Damages to Parcels Injured by the Abandonment of Streets or Parts of Streets as Public Highways.

Description of parcel injured.	Number of square feet therein.	Street abandoned.	Damages.

26 SCHEDULE 3.

Filed January 18, 1896. J. R. Young, clerk.

Assessment on One-half of Above Award on Property Benefitted.

Total amount of award for land taken, as above set forth in "Schedule 1"..... $36,736 73

Total amount of award because of the abandonment of streets or parts of streets as public highways, as above set forth in "Schedule 2"..... .....

Total award $36,736 73

Amount to be assessed on property benefitted, being half of total award..... $18,368 36

Assessed as follows:

Description of parcel.	Number of square feet therein.	Amount of assessment.
Block 1, lot 1.....	6,050	$350
" " 2.....	6,050	300
" 3.....	6,050	275
" 4.....	6,050	250
" 5.....	6,050	250
" 6.....	6,050	250

Schedule 3—Continued.

Description of parcel.	Number of square feet therein.	Amount of assessment.
lot 7	6,050	$250
" 8	6,050	250
" 9	6,050	250
" 10	7,327.5	271 53
" 11	5,450	150
" 12	5,450	150
" 13	5,450	150
" 14	7,728.75	368 63
" 15	7,567.5	136 72
Block 2, " 17	5,800	168 75
" 18	5,800	150
" 19	5,800	150
" 20	5,800	150
" 21	5,800	150
" 22	5,800	150
" 23	5,800	150
" 24	5,800	187 50
" 25	5,800	187 50
" 26	5,800	187 50
" 27	5,800	187 50
" 28	5,800	187 50
" 29	5,800	206 25
" 30	5,800	225
Block 3, " 1	6,783.55	307 59
" 2	5,954.4	148 86
" 3	5,954.4	148 86
" 4	5,954.4	148 86
" 5	5,954.4	148 86
" 6	5,954.4	148 86
" 7	5,954.4	148 86
" 8	6,783.55	307 59
" 9	5,802.6	671 92
" 10	8,637.2	1 56
" 12	8,637.2	1 56
" 13	7,602.6	110 96
" 14	6,300	98 43
" 15	6,300	98 43
" 16	6,300	98 43
" 17	6,300	98 43
" 18	7,602.6	110 96
" 19	8,637.2	1 82
" 22	6,468.5	556

Schedule 3—Continued.

Description of parcel.	Number of square feet therein.	Amount of assessment.
Block 4, lot 1		
" 2	6,674.1	$174 48
" 3	7,346.36	97 36
" 4	7,052.7	40 74
" 5	7,538.2	26 18
" 6	6,490.5	23 62
" 7	6,490.5	23 62
" 8	6,490.5	23 62
" 9	6,490.5	23 62
" 10	7,538.2	26 18
" 11	7,052.9	40 74
" 12	5,976.7	97 36
" 13	3,653.9	190 27
" 16	6,538.9	218 10
" 17	6,864.3	162 27
" 18	7,052.7	113 17
" 19	7,538.2	72 72
" 20	6,276.75	62 50
" 21	6,467.25	75
" 22	6,657.75	75
" 23	6,848.25	75
" 24	7,038.75	75
" 25	6,332.75	87 50
" 26	4,730.25	100
" 27	10,252.5	511 53
" 28	4,980.25	125
" 29	6,562	104 16
" 30	10,263.5	427 60
" 31	7,723.15	9 84
Block 5, " 6	8,244.9	102 73
Block 6, " 1	7,182.76	565 65
" 3	6,228.9	161 76
" 4	5,747.4	278 10
" 5	5,747.4	278 10
" 6	5,747.4	* 324 45
Block 1, lot 16	5,841	100
" 17	5,642.75	100
" 18	6,517	100
" 19	6,550	100
" 20	6,550	100
" 21	6,550	100
" 22	6,550	100

*[In pencil:] 14,329.19.

Schedule 3—Continued.

Description of parcel.	Number of square feet therein.	Amount of assessment.
lot 23	6,550	100
" 24	6,550	100
" 25	6,550	100
" 26	6,550	100
" 27	6,550	100
Block 2, " 1	6,550	100
" 2	6,550	100
" 3	6,550	100
" 4	6,550	100
" 5	6,550	100
" 6	6,550	100
" 7	6,550	100
" 8	6,550	100
" 9	6,550	100
" 10	6,550	100
" 11	6,550	100
" 12	6,550	100
" 13	6,550	100
" 14	6,550	100
Block 4, " 32	7,598.25	50
" 33	7,407.75	50
" 34	7,217.25	50
" 35	7,026.75	50
" 36	6,937.5	50
" 37	6,949.5	50
" 38	6,962	50
" 39	6,967.5	50
" 40	6,967.5	50
" 41	8,244	50
" 42	9,267.5	50
" 43	10,004	50
Block 6, " 2	6,248.5	129 17
" 7	9,461.25	100
" 8	9,449.75	100
" 9	9,437.25	100
" 10	9,424.75	100
" 11	9,412.25	100
" 12	9,399.75	100
" 13	9,387.25	100
" 14	9,374.75	100
		$18,368 36

27 *Motion in Arrest of Judgment.*

Filed January 22, 1896.

In the Supreme Court of the District of Columbia, Sitting as a District Court of the United States.

In Re Subdivision Known as Ingleside Subdivision by Chapin Brown, in the District of Columbia, in "Section One" of the Map of Permanent System of Highways. No. 453.

And now come the defendants, Charles H. Bauman, Chapin Brown, trustee; Joseph L. Atkins, trustee; John H. Jolly, Charles G. Shoemaker, Edmund W. Woodruff, Herbert H. Kimball, and James H. Hensley, by Chapin Brown and Arthur H. O'Connor, their attorneys, and The American Security and Trust Company, by Nathaniel Wilson, its attorney, and move the court that judgment in the above-entitled case be arrested upon the following grounds:

1.

Because section 11 of the act of Congress under which these proceedings are instituted, authorizing the jury to deduct from the damages for the taking of a part of a parcel of land the benefits the purpose for which the land is taken, may be to the owner of such parcel by enhancing the value of the remainder of the parcel, is unconstitutional and void and in violation of article five (5) of the amendments to the Constitution of the United States, in that the said benefits are required by the said section to be such benefits as are enjoyed by the community in general in common with the owner of
28 such parcel and for other reasons manifest upon the reading of the said act.

2.

Because the assessment against the land in said subdivision of one-half of the amount awarded in said verdict as damages is illegal and void.

3.

Because the said assessment is based upon one-half of the total value or damages found by the jury for the land condemned and to be taken without first deducting from the total of said value or damages the benefits to particular parcels, part of which is taken.

4.

Because the proceedings had and to be had under said act of Congress are, and the purpose of the same is, for the benefit of the public in general in the District of Columbia, and the provisions in said act requiring one-half of the expense and cost thereof to be assessed on property to be found by the jury to be benefited thereby

is in violation of article five (5) of the amendments to the Constitution of the United States and is void.

5.

Because said act of Congress is in violation of said article five (5) of the amendments to the Constitution of the United States and is void, in that the said act makes no provision for the payment of just compensation to the owners of the land to be taken and does not make any provision by which such payment is secured or can be in any way or to any extent enforced.

6.

Because all of the provisions of said act of Congress are
29 vague and uncertain and incapable of enforcement at law, and are therefore void.

CHAPIN BROWN,
ARTHUR H. O'CONNOR,
Attorneys for Defendants.

NATHANIEL WILSON,
Attorney for the American Security & Trust Co.

Motion for New Trial.

Filed January 22, 1896.

In the Supreme Court of the District of Columbia, Sitting as a District Court of the United States.

In Re Subdivision Known as Ingleside Subdivision by Chapin Brown, in the District of Columbia, in "Section One" of the Map of Permanent System of Highways. No. 453.

And now come the defendants, Charles H. Bauman, Chapin Brown, trustee; Joseph L. Atkins, trustee; John H. Jolly, Charles G. Shoemaker, Edmund W. Eoodruff, Herbert H. Kimball, and James H. Hensley, by Chapin Brown and Arthur H. O'Connor, their attorneys, and The American Security and Trust Company, by Nathaniel Wilson, its attorney, and move the court to set aside the verdict rendered in the above-entitled cause and grant them a new trial upon the following grounds:

30 1. Because the verdict is contrary to the evidence.

2. Because the verdict is contrary to the law.

3. Because the verdict is unjust and unreasonable.

4. Because the damages found and allowed for the taking of land condemned are insufficient.

5. Because the benefits to the remainder of parcels, parts of which are to be condemned and taken as found by the jury under section 11 of the act of Congress under which these proceedings are instituted, are excessive, contrary to the evidence, and not according to the instructions of the court.

6. Because the said section 11 of the act of Congress referred to in the next preceding paragraph is unconstitutional and void and in violation of article five (5) of the amendments to the Constitution of the United States, in that the said benefits are required by the said section to be such benefits as are enjoyed by the community in general in common with the owner of such parcel and for other reasons manifest upon the reading of the said act.

7. Because the assessment against the land in said subdivision of one-half of the amount awarded in said verdict as damages is illegal and void.

8. Because the said assessment is based upon one-half of the total value or damages found by the jury for the land condemned and to be taken without first deducting from the total of said value or damages the benefits to particular parcels, part of which is taken.

9. Because the proceedings had and to be had under said act of Congress are, and the purpose of the same is, for the benefit of the public in general in the District of Columbia, and the provisions in said act requiring one-half of the expenses and cost thereof
31 to be assessed on property to be found by the jury to be benefited thereby is in violation of article five (5) of the amendments to the Constitution of the United States and is void.

10. Because said act of Congress is in violation of said article five (5) of the amendments to the Constitution of the United States and is void, in that the said act makes no provision for the payment of just compensation to the owners of the land to be taken and does not make any provision by which such payment is secured or can be in any way or to any extent enforced.

11. Because all of the provisions of said act of Congress are vague and uncertain and incapable of enforcement at law, and are therefore void.

12. Because of errors of law of the presiding justice upon the trial of this case in his rulings and instructions, to which exceptions were taken at the trial by these defendants and allowed by the court.

13. Because there are no damages found or allowed for the abandonment of portions of Ingleside terrace, a street in said subdivision.

CHAPIN BROWN,
ARTHUR H. O'CONNOR,
Attorneys for Def'ts.

NATHANIEL WILSON,
Attorney for the American Security & Trust Co.

32 *Decree, &c.*

Filed July 1, 1896.

In the Supreme Court of the District of Columbia, Sitting as a District Court of the United States for said District.

No. 453.

In Re Suburban Subdivision Known as Ingleside Subdivision by Chapin Brown, in the District of Columbia, Included within Section 1 of the Plan for the Extension of a Permanent System of Highways in the District of Columbia.

On considering the proceedings heretofore had in this cause and the mandate and opinion of the Court of Appeals of the District of Columbia filed in this court in cause No. 419, entitled "*In re* Dennison and Leighton's subdivision of Mount Pleasant and Pleasant Plains," &c., which said opinion is applicable to and decisive of the questions presented by the pleadings in this cause—

It is adjudged, ordered, and decreed that the motions for a new trial filed herein and the motion to discharge the jury and dismiss the proceeding be denied, and that the verdict of the jury filed herein, so far as it finds benefit to the remainder of those lots or parcels of ground only a part of which are taken pursuant to the eleventh section of the act of Congress under which this proceeding is had and assesses benefits against the remainder of said lots or parts of lots so taken, be, and the same is hereby, set aside, vacated, and for naught held.

33 It is further adjudged, ordered, and decreed that Schedule Three, which is referred to in and made a part of said verdict, and so much of said verdict as assesses against each of the several parcels of ground therein mentioned its proportional part of the sum of $18,368.36, pursuant to section fifteen of said act, be, and the same is hereby, vacated, set aside, and for naught held.

It is further adjudged, ordered, and decreed that the said verdict, so far as it determines the value of and awards compensation for the lots and parts of lots of ground taken for a permanent right of way pursuant to the prayers of the petition filed herein, be, and the same is hereby, ratified and confirmed, and a permanent right of way over said several lots and parts of lots taken as indicated in the plat filed with said petition is hereby adjudged to be condemned, and is hereby condemned, as prayed for in the said petition.

It is hereby adjudged, ordered, and decreed that there is due and payable to the respective owners hereinafter named of the said lots and parts of lots condemned as aforesaid as compensation therefor, according to the verdict of said jury, the following sums of money, to wit:

34 Parts of lots taken.	Valuation.	Payable to—
Block 1, lot 1	$350	Charles H. Bauman.
" " " 2	300	" " "
" " " 3	275	John H. Jolly.
" " " 4	250	Charles G. Shoemaker.
" " " 5	250	Annie H. Pangburn.
" " " 6	250	Charles H. Bauman.
" " " 7	250	" " "
" " " 8	250	" " "
" " " 9	250	" " "
" " " 10	271 53	" " "
" " " 11	150	" " "
" " " 12	150	" " "
" " " 13	150	" " "
" " " 14	737 26	" " "
" " " 15	410 16	" " "
" 2 " 15	982 50	" " "
" " " 16	1,245	" " "
" " " 17	337 50	" " "
" " " 18	300	" " "
" " " 19	300	" " "
" " " 20	300	" " "
" " " 21	300	" " "
" " " 22	300	Frank B. Noyes.
" " " 23	300	" " "
" " " 24	375	" " "
" " " 25	375	Frank B. Noyes.
" " " 26	375	" " "
" " " 27	375	" " "
35		
Block 1, lot 28	$375	Edmund W. Woodruff.
" " " 29	412 50	Charles H. Bauman.
" " " 30	450	" " "
" 3, " 1	615 19	" " "
" " " 2	297 72	" " "
" " " 3	297 72	" " "
" " " 4	297 72	" " "
" " " 5	297 72	" " "
" " " 6	297 72	" " "
" " " 7	297 72	" " "
" " " 8	615 19	" " "
" " " 9	1,343 85	" " "
" " " 10	1 56	" " "
" " " 12	1 56	" " "
" " " 13	221 92	" " "
" " " 14	196 87	" " "
" " " 15	196 87	" " "

Parts of lots taken.	Valuation.	Payable to—
Block 1, lot 16	196 87	Charles H. Bauman.
" " " 17	196 87	" " "
" " " 18	221 92	" " "
" " " 19	1 82	" " "
" " " 22	1,111 99	" " "
" 4, " 1	544 32	" " "
" " " 2	523 45	" " "
" " " 3	292 09	" " "
" " " 4	162 97	Charles H. Bauman.
" " " 5	104 71	" " "
" " " 6	94 50	" " "
" " " 7	94 50	" " "
" " " 8	94 50	" " "
36		
Block 4, lot 9	94 50	Charles H. Bauman.
" " " 10	104 71	" " "
" " " 11	162 97	" " "
" " " 12	292 09	" " "
" " " 13	570 82	" " "
" " " 14	1,246	" " "
" " " 15	867 69	" " "
" " " 16	654 31	" " "
" " " 17	486 82	" " "
" " " 18	359 52	" " "
" " " 19	218 15	" " "
" " " 20	187 50	" " "
" " " 21	225	" " "
" " " 22	225	" " "
" " " 23	225	" " "
" " " 24	225	" " "
" " " 25	262 50	" " "
" " " 26	300	" " "
" " " 27	1,534 59	" " "
" " " 28	125	" " "
" " " 29	104 16	" " "
" " " 30	427 60	" " "
" " " 31	9 84	" " "
" 5, " 1	700 42	Charles H. Bauman.
" " " 6	102 73	" " "
" " " 7	638 01	" " "
" " " 8	807	" " "
" 6, " 1	565 65	" " "
" " " 3	161 76	" " "
" " " 4	278 10	Herbert H. Kimball.
" " " 5	278 10	James H. Hensley.

Parts of lots taken.	Valuation.	Payable to—
37		
Block 6, lot 6	324 45	Charles H. Bauman.
" " " 15	1,403 65	" " "
Reservation A	2,571 80	" " "
	$36,736 73	

W. S. COX, *J.*

38 *Opinion of the Court.*

Filed January 27, 1895.

In the Supreme Court of the District of Columbia.

In Re the Condemnation of Lands in Subdivision No. 419 for Public Highways.

At the commencement of these proceedings a motion was made on behalf of the owners of some of the ground sought to be condemned that the jury be discharged and the proceeding dismissed.

It was understood then that the motion should be overruled *pro forma* in order that the questions made should be carried up by appeal, and the court was not requested to consider them or pronounce any formal opinion.

But since the case was submitted to the jury and a finding has been made by them the questions involved in that motion have again been brought forward, and the court is moved to re-
39 consider them and decide them upon their merits, and to give the same relief that was then applied for.

I have felt bound to entertain this motion, especially as it has seemed to me that we can better appreciate the merits or defects of the law under which we are acting, now that we have seen something of its practical operation, than we could beforehand.

Without examining in detail the motion which was filed at the beginning of this proceeding, which was quite voluminous, it is sufficient to say that the substance of the grounds set forth in it is that the act of Congress under which this condemnation is made is unconstitutional because it provides for taking private property for public use without providing for just compensation to the owners, as the Constitution requires.

The act of Mar. 2, 1893, under which this proceeding was initiated, requires the Commissioners to prepare in sections a plan for the extension of a permanent system of highways over the District of Columbia, and when the plan as to any section is adopted they are directed to cause a map of the same to be made showing the boundaries and diminsions of the streets, avenues, and roads, and

when the map is approved by a commission created by the act it is directed to be recorded. Within thirty days after it is recorded the Commissioners are required to apply to the supreme court D. C. to condemn a permanent right of way for the public over all the land lying within the highways laid out by the Commissioners and indicated on the map *in any existing subdivision*, which is not already dedicated to the public or owned by the U. States or Dist. of Columbia. In the proceeding for the condemnation it is directed that when the use of only part of a parcel is condemned the jury, in assessing damages therefor, "*shall take into consideration the benefit the purpose for which it is taken may be to the owner or owners of such tract or parcel by enhancing the value of the remainder of the same, and shall give their verdict accordingly.*" In another form they are directed to state as to each parcel of land involved in the proceeding "only the amount of compensation, less the benefits, if any, which it (they) shall award in respect thereof."

When the damages to be awarded for each highway or part thereof are ascertained one-half of the amount is to be assessed upon the land benefited by the highway and the other half is to be charged to the general revenues of the District, and the amounts thus assessed against the property benefited are to be a lien on the property and to be collected like special improvement taxes.

It will thus be seen that the subject of *benefits* is twice introduced in the law. If when part of a lot is condemned and taken the remaining part is to derive a special and peculiar benefit from the proposed improvement, as, for example, where from fronting on a narrow alley it acquires instead a front on a spacious avenue, whereby its value is greatly increased, that advantage or benefit is to be valued, and its value is to be deducted from the amount awarded as compensation for the ground taken and for any incidental damage occasioned thereby, or if the benefit equals the damages it is to be set off against and satisfy them. On the other hand, that general benefit which all the property in the neighborhood derives from the existence of a new and convenient avenue, though it may not abut upon the avenue, is not to be considered in making the award for the ground taken, but an assessment for this general benefit is to be made on all the property which experiences it. The deduction for benefits is referred to the power of eminent domain. It is, in effect, part payment of the compensation, to be made to the owner. He is paid, partly it may be, in cash, and partly by the benefits conferred upon his remaining property. The assessment for general benefits, however, is the exercise of the power of taxation; and there seems to be no doubt about the power of a legislature to levy taxes in this form. As the Supreme Court of the United States say in Spencer *v.* Merchant, 125 U. S., 356:

"In the absence of any more specific constitutional restriction than the general prohibition against taking property without due process of law, the legislature of the State, having the power to fix the sum necessary to be levied for the expense of a public improvement and to order it to be assessed, either, like other taxes, upon

property generally or only upon the lands benefitted by the improvements, is authorized to determine both the amount of the whole tax and the class of lands which will receive the benefit, and should therefore bear the burden, although it may, if it sees fit, commit the ascertainment of either or both of these facts to the judgment of commissioners.

"When the determination of the lands to be benefitted is entrusted to commissioners the owners may be entitled to notice and hearing upon the question whether their lands are benefitted and how much, but the legislature has the power to determine, by the statute imposing the tax, what lands which might be benefitted by the improvement are in fact benefitted; and if it does so, its determination is conclusive upon the owners and the courts, and the owners have no right to be heard upon the question whether their lands are benefitted or not, but only upon the validity of the assessment and its apportionment among the different parcels of the class which the legislature has conclusively determined to be benefited."

But when we approach the subject of the *deduction* of benefit we encounter the most vexed question in this branch of constitutional law. We are not to expect much light upon it from the decisions of the Federal courts because the Government of the United States has had little occasion to condemn property for public use outside of the District of Columbia, and I am not aware that in the rare instances that have occurred this question has ever arisen.

But in the State courts the decisions are innumerable and irreconcileable. In some the subject is regulated by constitutional or statutory enactment in different ways; in others it is determined differently by the courts upon general principles.

In some States special benefits are allowed to be deducted, not from the ascertained value of the land taken, but only from the incidental damages allowed in addition to that; in others—but this is generally, perhaps, statutory—there can be no deduction for benefits at all. In others, again, both special benefits and the general benefits shared in common with the neighborhood or locality can be deducted. In others, again, the special benefits can be deducted from both the ascertained value of the land taken and the incidental damage occasioned by the taking. It would be utterly useless to attempt a review of the authorities, and I do not see how I can do better than acquiesce in the conclusion of those eminent commentators, Judge Cooley and Judge Dillon, that the weight of authority in the State courts favors the last-mentioned view, viz., that the special benefits to an individual lot of which a part is condemned can properly be set off against or deducted from the amount found due as the value of the land appropriated and as special damage to the remainder of the tract or parcel.

41

Cooley, Con. Lim., pp. 698 to 702; Dillon, Mun. Corp., sec. 625.

But this does not relieve us of the difficulty. The question still remains, What kind of benefit may thus be set off and deducted, and how is it to be ascertained?

It is agreed on all hands that the land taken is to be paid for at

its present value, not according to the value determined in the future by the contemplated improvement—Mills on Eminent Domain, sec. 174; Lewis on Eminent Domain, sec. 480—and common justice requires that any deduction from this for supposed benefits should be for benefits which if not immediately realized should be at least so far present as to be certain and presently ascertainable. A municipality, for example, directs a street to be condemned, opened, paved, and graded, and that the benefits to the remaining property shall be deducted from the damages allowed to the owners for the land taken. Here the benefit is certain and easily estimated, and there may be no hardship in paying for the land partly or wholly in these benefits. In the examination of a great many cases I have found none in which this charge of benefits is sanctioned except where the improvement has been peremptorily directed by law to be made. A street or county road has been directed to be laid out, swampy ground has been directed to be drained and reclaimed, or a bridge to be built, or an existing street widened. The owner of land to be affected by the proposed improvement has all the certainty of benefit which legislative ordinance can give him. The jurors who are to estimate the damages know when the work is to be done and what will be the cost, and can easily estimate the benefit to result from it. There is nothing conjectural, illusive, or problematical about it, and this is the class of cases in which I understand the deduction of benefits to be sanctioned by the authorities.

And this would apply equally to general benefits assessed and special benefits deducted.

Examples of this are the case of People *v.* Brooklyn, 14 N. Y., 419, in which a street was ordered to be opened and paved, and the expense was ascertained to be $20,390.25 and was ordered to be assessed on the property benefited; the case of Livingston *v.* Mayor of New York, 8 Wend., 85, where a street was actually opened by the
42 city, and the peculiar and special benefits were set off or deducted; the case of Genet *v.* Brooklyn, 99 N. Y., 296, where an act was passed for the widening of Sackett street, and the special benefits were required to be deducted from the damages found, and the case of Terry *v.* Hartford, 39 Conn., 286, where a street was actually laid out through a party's lands.

But let us suppose, if so foolish a thing can be conceived of as possible, that Congress should direct the condemnation of land for improvements to be made at some future day and of a character yet to be determined, and require the valuation of the land condemned to be reduced by the possible benefits to the land retained from the mere prospect of undefined improvements in the future. Could that possibly be sustained as just compensation in the sense of the Constitution? There can be but one answer to such a question, and this leads us to the inquiry whether the present case approaches the one supposed or falls within the class before described.

The object of the act of March 2, 1893, is declared to be to establish a permanent system of highways in that part of the District of Columbia lying outside of the cities.

A highway is a road open to the public—a main road or thoroughfare.

To be complete, it must be opened. As the supreme court of New Jersey say in State-Gaines Pros. *v.* Hudson County Avenue Commissioners, 37 N. J. L., 12: "The second meaning which may be given to this expression of 'opening said avenue' is that it denotes the operation of clearing the avenue of obstructions. This is the sense in which the term 'to open,' as applied to the construction of public highways, is used in our road acts. By force of that legislation the surveyors of the highways lay out the road and the overseers 'open' them. The term to open in this connection obviously means to clear away the obstructions in the road." The same term is employed in this statute, as we shall see further on, and with the same meaning, as it seems to me.

But the clearing away of all obstructions to travel is not the only thing involved in the opening of a highway to public use. In the case of Weightman *v.* The Corporation of Washington, 1 Black, 39, from the obligation of the city to defray the expenses of keeping a bridge in repair the supreme court deduced the obligation to guaranty its safety and the liability of the city in damages for an accident resulting from want of repair.

In the case of Barnes *v.* District of Columbia, 91 U. S., 540, because the Board of Public Works, as a branch of the District government, had by law the entire control of the streets, avenues, &c., and power to make all regulations which they might deem necessary for keeping them in repair, the District was held liable in damages for an accident occurring on the street because it was in an unsafe condition.

The act of June 25, 1874, 18 Stat., 116, transferred to temporary Commissioners all the power and authority of the governor and Board of Public Works of the abolished District government, with certain exceptions not material to the present question.

43 In addition to that, it provided that an engineer officer should be detailed, who should, *subject to the general supervision and direction of the Board of Commissioners, have the control and charge* of the work of repair and improvement of all streets, avenues, alleys, sewers, *roads, and bridges of the District of Columbia.* That control of the *streets of the city* by the Board of Public Works which was held to make the District government responsible for their safety *was hereby extended to all the roads* in the District, so that there could hardly be a doubt that the District was thereby made a guarantor of their reasonable safety for travel.

By act of June 11, 1878, 20 Stat., 102, the powers and authority and, consequently, the responsibilities of the temporary Commissioners were transferred to the present government of the District.

So that the idea of a highway involves not only an open and unobstructed passageway for travel, but one of guaranteed safety.

What have we under the present legislation?

A contrast is noticeable between the case where a projected highway does *not* lie within the limits of an existing subdivision and the case where it does so lie, as in the case now before us.

In the former case the Commissioners are only to apply to the court, *when in their judgment the public convenience shall require the opening* of the highway, for the condemnation *and opening* of the same, and then the court is first to hear evidence as to whether the public convenience does *in fact require the immediate opening* of the highway, and if the court shall decide that question in the negative there shall be no further proceeding.

This would be the form of proceeding in which the authorities before referred to would countenance the assessment and deduction of benefits.

But the provisions referred to are conspicuously absent from that part of the law which governs the present case.

Where the highway to be condemned runs through *an existing* subdivision, no considerations of public convenience as to opening the highway are to govern the Commissioners, but they are required within thirty days after filing their map to make application to the court not, as in the other case, to condemn *and open* the highway, but simply *to condemn* a permanent right of way for the public.

The principal highway in subdivision 419 which we have been so long examining is Sixteenth street. As laid out upon the map, this passes through enclosures and buildings. Until these are removed, it cannot be open to use. The Commissioners cannot spend a dollar for this purpose without authority of Congress. No such authority is given in this act nor any direction that the street shall be opened. It is not even provided that on any contingency, such as the reasonableness of the award of damages or the appropriation by Congress to pay them, the highway shall be opened, but the law stops at the condemnation of the land, and thus establishes an impassible barrier to any individual improvement without guaranteeing a public one. Until the street is opened no one can use it as a highway and no one could recover damages for injuries
44 sustained in such unauthorized use, so that the lot-owner, by the mere condemnation which the law authorizes, acquires no right to that which is charged to him as the consideration in part for his land, and he has no assurance when, if ever, he will acquire that right. Meanwhile his land is taken from him because he can put it to no use and because the District may take possession of it without paying him for it in money if these special benefits are charged against it.

Congress *de industria* declines to bear any of the expense of highways outside of Washington and Georgetown, and throws the whole burden on the revenues of the District, so as to make all improvement in that direction contingent upon the condition of the District treasury, so that the benefit lies in the uncertain future and is conjectural. It may be further remarked, as showing how difficult it is to estimate these conjectural benefits, that no grades have been established for these streets, and therefore it cannot be known whether a particular lot will be above or below grade—a very material question to the just ascertainment of benefits, even where benefit is certain to accrue as to time, if at all.

The question then presents itself whether to deduct from or set off against the damages due the owner for part of a lot taken such benefit as above described to the rest of his lot is, to that extent, to pay him that just compensation which the Constitution requires.

It does not seem to me that the State courts go that far.

No Federal decisions directly upon this point have been cited, nor has the question been directly presented before in this District.

Attention has been called to the Revised Statutes, D. C., which do provide, in section 261, that in the condemnation of land for roads the jury shall *take into consideration* the benefit which the road may be to each owner by enhancing the value of his land or otherwise.

But all this is only to be done when in the first place application is made by residents of the county to have a new road laid out or an old one altered, or when the authorities of the District shall deem it conducive to the public interest *to open* a new road or alter an old one. It contemplated, therefore, the actual construction of roads, in which case the benefit is in sight and not conjectural.

But, although this question has not arisen directly and been decided in the Federal courts, both the Court of Appeals, D. C., and the Supreme Court of the United States have used language which is of weight and shows very plainly what their opinions will be when the question directly arises.

Thus, in the case of The District of Columbia *v.* Prospect Hill Cemetery *et al.*, Washington Law Reporter, vol. 23, p. 11, where the benefits were attempted to be set off against damages without any statutory authority to do so, the court, through Morris, J., said:

"Most extraordinary and unjustifiable would it be to levy such an assessment before the proposed improvement was ever begun; and yet this would be the precise effect of an attempt to set off against the just compensation payable for land sought to be condemned for the purposes of a street the *possible* benefits that might accrue to adjoining land from the opening of such a street. Even if the just compensation payable under the guaranties of the Constitution could be violently construed as payable in land or in the increased value of land or in some *possible or problematical benefit or advantage* or convenience that would inure to a person, it would be in any event payment for present loss *by a mere promise, that might never be realized*, of future advantages. * * * It is not reasonable to pay for land taken for the public use in promises of increased value for the remainder that may have no foundation in fact."

And so, in the case of Monongahela Nav. Co. *vs.* United States, 148 U. S., 312, Mr. Justice Brewer, while he repudiates the idea that *general* benefits can be made part of the compensation taken, also cites with approbation the case of Isom *vs.* The Mississippi Central R. R. Co., 36 Miss., 300.

There it appeared that the charter of the R. R. Co. authorized it to have land condemned for its road and contained the clause that the jury in estimating the damages shall take into the estimate the

benefits resulting to the owners towards the extinguishment of his claim for damages, substantially the same provision as that of the present law.

In that case the court said: "The rule held by this court is this: Under our Constitution the owner of the land is entitled to just compensation for the damage he sustains by the application of his land and property to public use at the time the public make the appropriation of his private property. The value of the property in the market at that time and no other, and the injury then necessarily known to result to the owner as the necessary and immediate consequence of such public use of his property, without reference to the uncertain or remote benefits or disadvantages that may or may not accrue in the future, is what (in legal contemplation) the owner looses. Whatever is *then incapable of definite ascertainment, but rests merely on conjecture, possibility, or probability, dependent on the future*, cannot be taken into the estimate by the rule of just compensation. It cannot be just to award compensation for injuries that may never happen, nor, on the other hand, can it be just to compensate *present injury* or deprivation of right by the possible or probable benefits which may result at some future time from what is now an admitted injury. To say that the owner shall be paid at any other time or in anything else than the measure of value known to the Constitution, or that he shall receive more or less than the loss or injury *then* capable of definite inquiry and ascertainment, or that his claim to this compensation shall be extinguished by the probable benefits which in the future may result from the construction of a road which may not be finished in sixteen years (the time limited by the charter) cannot by any fair interpretation of the Constitution be regarded as just compensation first made. This provision of the charter, therefore, which requires the "jury in estimating the damages to take into the estimate the benefit resulting to such
46 owner by reason of such road passing through his land towards the extinguishment of such claim for damages," is subversive of the rights intended to be secured by this clause of the Constitution, and to that extent is void."

I endorse these sentiments and consider the language of the Mississippi court strongly applicable to the present case. There is no difference in principle between the taking of private property for the use of a railroad and taking it for the immediate use of the State. In both cases it is taken only in virtue of the right of eminent domain, and in both cases the same just compensation must be made. Congress, by the act of 1893, authorizes the taking of private property for public use and attempts to pay for it partly in benefits to be received in the future, and that contingently. It fails to provide for the just compensation required by the Constitution to be made, and is therefore an unconstitutional appropriation of private property which the courts cannot carry out. It is unnecessary to decide whether the recording of the map amounts to a taking. It is sufficient that the law purports to transfer the title and put the Government in possession when it has only paid a part of the compensation due, and this is a taking without just compensation.

It was contended in argument that the mere fact of recording the map was a benefit, inasmuch as it established the streets and avenues in the sense of settling their lines and boundaries for all future time, and thus furnished a guide for all future improvements; that this was the benefit intended by the act of Congress and is to be presumed to be the benefit deducted by the jury.

The act will not bear this construction. The jury are to consider, not the benefit which the platting or even condemnation of the land may be, but that which the purpose (or object) of the taking of the land may be, and the object of the taking of the land must be to convert it to actual use and not merely to plat it on a map. Section 11 also must be read in connection with section 15. By the latter the same jury that assess the damages in part by deducting benefits are to assess the general benefits on the land benefitted by the *laying out and opening of the highway*, and in doing that they are to make due allowance for any amount that may already have been deducted for the special benefit to what is left of a lot partially taken; but it is plain that the benefits provided for in both sections are of the same kind. As far as their source is concerned they are the benefits to be derived from a completed, established, and opened highway, and not from one merely projected on paper, and as such they are not present, but future and contingent ones. I have no doubt that the jury have endeavored to carry out the law in this sense, and have arrived at the amount of special benefits by deducting the present value of the parts of land left unappropriated from their probable value when these highways are completed and open for use.

If this constitutional question had been pressed before the jury proceeded to act I would have felt obliged to pronounce the law unconstitutional and to arrest all further proceedings under it. If no benefits had been found by the jury there would have
47 been, perhaps, no occasion to raise the question; but as the jury have found a large amount of special benefits to be deducted from the damages ascertained, the inherent vice of the law has been practically demonstrated, and it becomes my duty to set aside the whole proceeding for the condemnation of the land.

I might stop here, but there are other features in the law as to which some comments are suggested by our experience in this case.

The 10th section of the law provides that one jury may be sworn and one trial had as to all or any of the parcels of land involved in the proceeding, at the discretion of the court.

And section 15 directs that the same jury which shall assess the damages shall also ascertain what property is benefited by the opening of the highway and shall assess one-half of the total amount of damages on the property so benefited.

The jury having been sworn first in relation to subdivision 419 of section 1st, it was at once perceived that if the jury were to consider what property outside of that subdivision would be benefited by so much of the new highway as lies within that subdivision and assess it accordingly, another jury, in passing upon an adjacent sub-

division, might in return assess benefits anew upon the lots in 419, and thus the assessments of different juries might overlap and be doubled upon the unfortunate lot-holder. The jury were therefore given to understand that they were to confine their assessment for benefits to this subdivision.

On further consideration it does not appear that this would carry out the law.

If we suppose a spacious avenue to be run through a half dozen subdivisions from the boundary of the city to the boundary of the District, it is evident that the part of the avenue nearest the city is just as certainly, though perhaps not in the same degree, beneficial to the most remote as to the nearest subdivision, because it is equally essential to it and forms part of its means of convenient access to the city; and the benefit of such a highway is not confined to the ground immediately abutting on it, but extends laterally to all the property to which it adds a convenient access to the city. In fact it diffuses itself in every direction until it imperceptively disappears like the ripples in a stream caused by a stone thrown into it; but if a jury are to assess all the property so benefited they must first know the whole amount of damages to be awarded for all the property taken for the supposed highway in order that a single assessment for benefits may be made. In order to do this it would be necessary for the same jury to assess the damages in all the subdivisions affected by the highway in question and for all assessments to be suspended until this work is completed, which shows that the assessment for benefits is premature and would in any event have to be set aside.

But, not to speak of the enormous and unreasonable amount of labor that this would devolve upon a single jury, it may be observed that the jury in making such assessment under the present law would be completely at sea, without chart, rudder, or compass.

In some of the States, as appears from cases cited in argu-
48 ment, assessment or taxation districts are created by the law directing these assessments for benefits, as by directing all the property within a certain distance on each side of the highway to bear the expense of it; but here no boundaries are prescribed to the assessors and they are left to wander indefinitely in search of property which may in their judgment be benefited, in however small a degree.

They are first to ascertain what property will be benefited. Then a gross sum, *i. e.*, one-half of the damages found, is to be charged upon that property, and the jury are to assess upon each lot its "*proper proportional part*" of that sum. By what standard is that proper proportional part to be ascertained? Is the gross sum to be apportioned among the lots according to their street frontage, their area, their existing value, or their probable increased value? It is evident that quite different results might be reached by different modes of apportionment, and yet the law is silent as to which is to govern the jury.

Some very pertinent remarks on this subject were made by the supreme court of New Jersey in the case of State *v.* Hudson County Avenue Commissioners, 37 N. J. L., 12, before referred to. They

say: "A legislative act of taxation in order to be legal and effectual must consist of something more than a mere declaration that a certain sum of money shall be raised out of the property within a county. Itself must distribute the burden. This is as essential as the designation of the amount to be raised; and not only the sum required must be stated and the property out of which it is to be made designated, but *also some certain standard of assessment must be established.* No act of *taxation can omit any of these components.*"

The uncertainty on this subject of the present law makes it impossible to get at and carry out the intent of the legislative authority, and has the unavoidable result of making any assessment a matter of guess-work or a purely arbitrary distribution of the burden.

The case calls for another remark.

The recording of the map by the Commissioners, if nothing is done in pursuance of this step, is only a less injury to the lot-owners than taking their property without paying for it.

The case of State *v.* Hudson County Avenue Commissioners, before referred to, has some features very like the present case.

The commissioners were authorized by a law to open an avenue across the county of Hudson. Among the first acts required of them was that of surveying the route of this road and adopting a location. This was done and then by a writ of certiorari the proceedings were brought before the Supreme Court.

The law intended to provide that the expense should be apportioned between the owners of land proximate to the road, within certain limits, and the public. The law was so confused and contradictory, however, as to the apportionment of the expense that the court held it impossible to carry it into execution, and the question then was whether the survey and location of the road should still stand good.

49 And the court said, per Beasley, chief justice: "In this respect, it was said, in the first place, that if the road has been properly laid it should not be obliterated or avoided, on the ground that certain subsequent proceedings prescribed in the statute cannot be carried into effect; but I can find nothing reasonable in such a position. The project cannot be carried through or made in any extent available unless the money necessary for it can be raised. This official survey, brought before us by this writ, is and must remain under the law in its present state a mere dead letter so far as the public is concerned, but it is and must be a very serious incumbrance upon the property which it traverses. As long as this map shall remain upon the public records, threatening the property which it embraces with the realization of the scheme of which it forms a part, so long there is every reason to believe the property will have its value affected in the market. * * * I do not believe the law will permit a landholder to be held at such a disadvantage. This adopted survey constitutes something very like a conditional lien on this land, and that lien cannot, with any sort of justice, be suffered to remain in the illusive anticipation of future legislation."

Accordingly, in that case, the court set aside the entire proceedings of the commissioners, including the recording of the plat of the road.

Had the full effect of the act of 1893 been appreciated before any step was taken to carry it into execution, this case would have been an authority for arresting even the preliminary proceeding of recording the map by certiorari or injunction.

No such question, however, is before me, and I refer to it only as an additional feature of the situation showing the importance of some legislative revision of the law.

W. S. COX, *Justice.*

50 *Opinion.*

Filed April 23, 1896.

Court of Appeals of the District of Columbia.

THE DISTRICT OF COLUMBIA, Appellant, }
v. } No. 552.
CHARLES H. ARMES *et al.* }

* * * * * * *

Mr. Justice SHEPARD delivered the opinion of the court:

This is an appeal from a judgment in a condemnation proceeding, instituted by the District of Columbia under the provisions of the act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities, approved March 2, 1893.

Before August 27, 1888, there was no law regulating the subdivision of lands outside of Washington and Georgetown, into blocks, lots, streets, etc. Many such were made, however, from time to time, and maps thereof admitted to record. On that day, an act of Congress was approved which authorized the District Commissioners to make and publish regulations concerning such subdivisions, and prohibited the record of any plat thereof without the order of said Commissioners endorsed thereon. The act, in the concluding section, prohibited the record of a plat "unless made in conformity with the general plan of the city of Washington." Some subdivisions were made under this act also.

The act of March 2, 1893, under the title aforesaid, undertook to provide a complete plan for a permanent system of highways throughout the whole of the District outside the boundaries of Washington and Georgetown. This was to be made as nearly in conformity with the street plan of the city of Washington as the Commissioners of the District might deem advisable and practicable. The plans were required to be prepared in sections of such area as the Commissioners might deem necessary, covering, first, such existing subdivisions as are not in conformity with the plan of the city of Washington. The plans were required to adopt and conform to any existing subdivisions made under the act aforesaid of August 27, 1888.

The map of each section, so determined upon by the Commissioners, was required to be delivered to a commission, consisting of the Secretary of War, the Secretary of the Interior, and the chief of engineers, who were authorized to adopt the same, or make a new one. The map when finally adopted was to be recorded, and the record of further subdivisions of any land included therein was prohibited. After the record of the map it was made unlawful for the District to improve, repair, or assume any responsibility in regard to any abandoned highway within the area embraced in said map, or to accept, improve, repair, or assume any responsibility in regard to any highway that any land-owner in such area should thereafter attempt to lay out or establish, unless the same, having first been submitted to the Commissioners and found to be in conformity with the map, shall have been approved by them and duly recorded. All land-owners were permitted to adopt the subdivisions of their lands so made, by deed or will, and such adoption was given all the effect of a plat or map made and recorded by them. The Commissioners were authorized to name all streets, avenues and reservations shown on the maps.

Wherever the maps so made and recorded shall alter or dispense with any highway, in their existing subdivisions, the Commissioners are required, within thirty days after record of such map or maps, to file a petition in the supreme court of the District praying the condemnation of all highways and reservations indicated on said map, that had not already been dedicated, etc.

In respect of highways, etc., outside of existing subdivisions, the Commissioners are empowered to institute condemnation proceedings where, "in their judgment, the public convenience shall require the opening of the same, or any part thereof." But the question whether the public convenience does in fact require such opening must also be passed on by the court, and if found in the negative the proceeding must be dismissed.

Ample provision is made for the manner of conducting the condemnation proceedings with notice and formal trial before the court and a special jury of seven disinterested men who shall not be in the employ of the District or of the United States. The sections of special importance in the consideration of this case are 11 and 15, which read as follows:

51 "SEC. 11. That where the use of a part only of any parcel or tract of land shall be condemned in such a proceeding the jury in assessing the damages therefor shall take into consideration the benefit the purpose for which it is taken may be to the owner or owners of such tract or parcel by enhancing the value of the remainder of the same, and shall give their verdict accordingly, and the court may require in such case that the damages and the benefits shall be found and stated separately."

"SEC. 15. That the amount awarded by said court as damages for each highway or reservation, or part thereof, condemned and established under this act, shall be one-half assessed against the land benefited thereby and the other half shall be charged up to the revenues of the District of Columbia; that one-half of the amount

awarded by said court as damage for each highway or reservation, or part thereof, condemned and established under this act, shall be charged upon the lands benefited by the laying out and opening of such highway or reservation, or part thereof, and the remainder of said amount shall be charged to the revenues of the District of Columbia. The same jury which shall assess the damages caused by the opening of any highways or reservation, or part thereof, or by the abandonment of an existing highway, or part thereof, shall ascertain and determine what property is thereby benefited, and shall assess against each parcel which it shall find to be so benefited its proper proportional part of the whole of said one-half of the damages: *Provided*, That in making such assessment for benefits the jury shall, as to any tract a part of which shall have been taken for such highway or reservation, or part thereof, make due allowance for the amount, if any, which shall have been deducted from the value of the part taken on account of the benefit to the remainder of the tract. The proceedings of the court and the jury in making assessments for benefits under this section shall conform as nearly as is practicable to the foregoing provisions of this act relating to the assessment of damages, and the verdict of the jury making an assessment under this section as to any parcel of land shall not be conclusive until the same shall have been confirmed by the court. When confirmed by the court, the assessment so made shall be a lien upon the land assessed, and shall be collected as special improvement taxes in the District of Columbia have been collected since February twenty-first, eighteen hundred and seventy-one, and shall be payable in five equal annual instalments, with interest at the rate of four per centum per annum from the date of the confirmation of the assessment by the court. That no expense for the improvement of any street, circle, reservation or avenue laid out under the provisions of this act, outside of the cities of Washington and Georgetown, shall be chargeable to the Treasury of the United States, but such expense shall be paid solely out of the revenues of the District of Columbia."

The foregoing are followed by sections giving appeals, with certain limitations, to the Court of Appeals, from all judgments that may be rendered; and providing how the money shall be distributed among the claimants, etc. Section 18 provides that upon payment of the damages the Commissioners shall have possession, and concludes with the following provision:

"In case the court shall enter judgment of condemnation in any case, and appropriation is not made by Congress for the payment of such award within the period of six months, Congress being in session for that time after such award, or for the period of six months after the meeting of the next Congress, the proceedings shall be void, and the land shall revert to the owners."

The first map made, and known as section 1, was recorded August 31, 1895, and embraces forty-seven independent subdivisions that had been previously made, from time to time, by land-owners. Within thirty days, as required by the law, petitions for condemna-

tion were filed against the owners of lands in each of said subivisions.

The proceeding in this case covers what is known as Denison and Leighton's subdivision of a part of Mount Pleasant and Pleasant Plains.

A jury was empanelled and returned a verdict in which they describe each lot, giving its area in square feet, the number of square feet taken for public use, and the value thereof, the value of buildings, etc., the damages, where any, to the remaining land, the benefits, where any, to the same, and concluding with the assessment of damages made in each case, less benefits.

Upon motions for new trial, in arrest, etc., based upon the unconstitutionality of the law, the learned justice before whom the proceeding was had, after delivering an able and comprehensive opinion giving the reasons for his conclusion, declared the whole act void, set aside the verdict, and dismissed the petition. From that judgment the appeal has been prosecuted.

1. The first question for decision arises under the eleventh section of the act which provides the manner of the assessment of damages where a part only of the owner's tract shall be taken. The jury are therein directed, in assessing the damages for the part taken, to consider also the benefit that "the purpose for which it is taken" may be to the owner by enhancing the value of the remainder.

In the recent case of Md. & W. R. R. Co. *v.* Hiller, 24 Wash. Law Rep. 249, which was a case of the condemnation of land for the use of a private corporation, we were compelled to give interpretation to the last clause of the fifth amendment: "*Nor shall private property be taken for public use without just compensation.*" And the majority of the court were of the opinion that this "just compensation" means the actual value of the property taken payable in money and without diminution on account of benefits general or special. In respect, however, of a claim for damages done to the adjacent land, not actually taken, special benefits are to be considered.

The same rule must necessarily apply where the appropriation is for the use of the Government. There is no ground for a distinction. However, it must be admitted, as pointed out in the case before referred to, that there is, in some material respects, a difference between the effect of condemnation of land for a railroad and for a public highway or street. In the former, the use of the taker
52 is practically exclusive, whilst in the latter case, the owner, as one of the public, has the enjoyment of all the uses of the thoroughfare, and has, besides, a special easement, or property, therein, for the subsequent deprivation of which, under certain circumstances, he may also be entitled to compensation. Whatever weight these considerations may be entitled to, they were not provided for in the fifth amendment as they have been in some of the later State constitutions; and whilst Congress may liberalize or extend the benefits of special compensation to the land-owner it can-

not restrict the operation of the words of the Constitution intended for his protection.

The difference between the effect of taking for a *quasi* public and a distinctively public use, we venture to suggest, accounts for the doctrine of some of the decisions wherein, as it seems to us, the exercise of the sovereign power of taxation, that may include the assessment of special benefits to pay or assist in paying for streets and their improvement when taken, has been confounded with the separate and distinct right of eminent domain.

Both these powers are sought to be exercised in the statute under consideration. Section 15, which provides for the assessment of part of the cost of the land upon the property in the neighborhood receiving benefits from the opening of the street or streets, will be matter of special consideration later.

Section 11, which regulates the condemnation, provides that the value of the part taken from an owner may be reduced by the benefits which may accrue to his remaining land. Where these benefits are found to equal or to exceed the value of the part taken, there is nothing left for which to assess the neighboring lands under section 15. The whole burden falls upon the one land-owner, notwithstanding the lands of others may receive benefits of the same kind to an equal or less extent. If the compensation, or "damages," as we think it is misnamed in the act, exceed the benefits, then the owner may be further assessed in proportion with others to make up the amount thereof, under the provisions of section 15. It is true that by special provision of that section the jury is required to make "due allowance for the amount, if any, which shall have been deducted from the value of the part taken on account of the benefit to the remainder of the tract." Exactly what this "due allowance" may mean is unimportant. In its broadest application it is eminently just; but it is given as an act of grace, and is not the compulsory recognition of a right. If the power to consider these benefits exists in the award of just compensation in the exercise of the right of eminent domain, it is dependent upon nothing else.

Payment of the surplus may be made from the public revenues, or in part from a fund provided by special assessments upon all neighboring lands that are benefited by the improvement, in the discretion of Congress. This power of special assessment may be made to operate concurrently with the other, or it may follow it or be called into existence by a later independent act; and in case of its exercise, there would seem to be no way in which, save by legislative favor, the owner could secure exemption from double assessment.

Granting the power to assess the cost of the improvement against lands benefited thereby, then if the provision requiring credit to the owner of the land taken for benefits assessed against him under section 11 had been omitted therefrom, it could hardly be rendered invalid thereby.

The plea of double assessment would be met with the answer that the first one was made, not as an assessment of a tax, but under the

separate and distinct provision of the fifth amendment, regulating compensation for lands taken for public use.

Had the power to assess and set off benefits been excluded from section 11, or had section 15 been amalgamated therewith and the owner of the land taken merely included with other neighboring land-owners in an assessment, in proportion to benefits, for the purpose of raising a fund to aid in paying the cost of the improvement, the foregoing objection might probably have been obviated; because, whilst the two proceedings would be had together, the assessment and payment of compensation, on the one hand, and the assessment of the cost of the public im-ment on the other, would have been separate and distinct operations.

Referring to the case of Md. & W. R. R. Co. *v.* Hiller, *supra*, where the reasons for the interpretation given the language of the fifth amendment limiting the exercise of the right of eminent domain are set forth, our conclusion is, that so much, at least, of section 11 as provides for the diminution of the just compensation for the value of the land taken to the extent of benefits accruing to the remainder, is beyond the power of Congress, and therefore void.

It does not follow, however, that the whole section shall be declared void and stricken from the bill because of the attempt to exercise a power that Congress does not possess; for, as if in recognition of a doubt as to its possession of such power, it is further provided that the assessments of value and of benefits should be separately made and returned by the jury. Although the word "*may*" is used in that provision, and not *must* or *shall*, we think the context authorizes it to be regarded as imperative rather than permissive only.

In Md. & W. R. R. Co. *v.* Hiller, *supra*, the trial court, without any direction upon the point in the law, required the jury to make a separate assessment; and upon return of the verdict, ignored the assessment of benefits and entered judgment for the value as found; and that judgment we affirmed. We see no reason, therefore, why the remainder of the section may not stand, with the whole provision as to benefits stricken out. It is plainly severable therefrom. Huntington *v.* Worthen, 120 U. S. 97, 102.

2. Notwithstanding the criticism contained in the opinion of the majority of the court in the recent case of Craighill *v.* Van Riswick, 24 Wash. Law Rep. 177, of the doctrine that special assessments for benefits received may be made in aid of public improvements, it was conceded that it had been established by the great weight of judicial decision in this country, as well as recognized to exist by the Supreme Court of the United States.

In that case, too, a marked difference was referred to as existing between assessments for the creation of public pleasure
52½ grounds and for the improvement of streets, building sewers, etc. As was said by Mr. Justice Morris: "The theory has its limitations and restrictions, as has the power of general taxation; and we think that it will be found, upon a closer analysis of the authorities, at all events of the best authorities upon the subject, that the theory has been applied only when some easement or appurtenance has been added to the lands of the person assessed, or

when some advantage has been given him which he did not possess before, such generally as the improvement of a street for access to his property or the construction of a sewer for the drainage of his land, or some similar work which he could, and should have done for himself, if it were not that such work by a private individual, for obvious reasons, would be impracticable."

Some of those special easements and rights of property in the streets, involved in this proceeding have been mentioned heretofore.

In so far as the general principle of the assessment, established by section 15 of this act is concerned, there can be no substantial objection. It is fair, liberal and regular. One-half only of the cost, and that payable in five annual instalments, is to be assessed against the property found to be benefited by the improvement, in proportion to the benefits by each tract received. The benefits are not apportioned by an arbitrary rule of frontage, area or neighborhood; but are to be ascertained by a jury under the direction and supervision of a competent court, with the same right of appeal as in other cases.

Any mode of arriving at the assessment of benefits, however, must to a certain extent be arbitrary, uncertain and unequal in operation; but these difficulties are inherent, and though furnishing strong reasons against the adoption of any such system of taxation, have not as yet been permitted to stand in its way.

The difficulty with section 15, in these respects, is not in the general principle of the assessment, but in giving it certain and effective operation in connection with other provisions of the act. For this reason, chiefly, the learned justice who tried the case set aside the verdict and declared the law inoperative and void. As was said in his opinion: "If we suppose a spacious avenue to be run through a half dozen subdivisions from the boundary of the city to the boundary of the District, it is evident that the part of the avenue nearest the city is just as certainly, though perhaps not in the same degree, beneficial to the most remote as to the nearest subdivision, because it is equally essential to it and forms a part of its means of convenient access to the city; and the benefit of such a highway is not confined to the ground immediately abutting upon it, but extends laterally to all the property to which it adds a convenient access to the city. In fact it diffuses itself in every direction until it imperceptibly disappears like the ripples in a stream caused by a stone thrown into it; but if a jury are to assess all the property so benefited they must first know the whole amount of damages to be awarded for all the property taken for the supposed highway in order that a single assessment for benefits may be made. In order to do this it would be necessary for the same jury to assess the damages in all the subdivisions affected by the highway in question, and for all assessments to be suspended until this work is completed."

The act does not contemplate the immediate opening up of all the streets provided for in the map; but that it shall be done first in the old subdivisions separately, and then in the outlying portions,

from time to time. Section 6 seems to contemplate an immediate but separate proceeding to condemn, against the property in each of the subdivisions, and that course has been pursued by the Commissioners. Section 7, on the other hand, defers the condemnation of streets and avenues in other portions of the District contained in the map, and outside of existing subdivisions, until such time as, in their judgment, public convenience shall require, and this exercise of discretion is made subject to review by the court. These requirements seem to have been ignored in section 15, which seems to contemplate an award of benefits on all lands benefited by opening up any particular highway. So, as said by Mr. Justice Cox: "If the jury were to consider what property outside of the subdivision would be benefited by so much of the new highway as lies within that subdivision and assess it accordingly, another jury, in passing upon an adjacent subdivision might in return assess benefits anew upon the lots in this subdivision, and thus the assessment of different juries might overlap and be doubled upon the unfortunate lot-holder." In the same way assessments might be further made to overlap in the later opening of a street to the District boundary.

The other sections of the act show that Congress regarded it as unwise to open a street to the District line sooner than the public convenience shall demand; whereas, it was considered important to at once rectify the existing subdivisions and conform them to the general plan. These were partly built upon and would probably be further incumbered by improvements, with a probable rapid increase of values and consequential damages to be compensated for.

In our opinion, section 15 is inoperative by failure to conform to the necessary operation of sections 6 and 7. To accomplish the object of speedy condemnation and rectification of streets in localities, where important, some provision should have been made for the creation of definite taxing districts, including one or several subdivisions and sections adjacent, where it might appear to be expedient and just, so that the work of condemnation, laying off, and assessment of expenses of streets could take place promptly without complication with others.

Another defect is that the assessments, when confirmed by the court, shall bear interest from date of such confirmation, notwithstanding the fact that Congress may not accept them, if at all, for a year, possibly, under the provisions of section 18.

3. That Congress has made no appropriation for the immediate payment of the compensation that may be assessed does not render the act invalid. That it had the right to authorize the Commissioners to withdraw, after judgment rendered in a similar proceeding where the money had been appropriated in advance, has
53 been decided. Ross *v.* U. S. *ex rel.* Prospect Hill Cemetery, 24 Wash. Law Rep. 98.

Here no appropriation is made; but it is declared that in case it is not made "within the period of six months, Congress being in session for that time after such award, or for the period of six months

after the meeting of the next session of Congress, the proceedings shall be void and the land shall revert to the owner."

The last words are meaningless, for the title cannot pass out of the owner until payment made or security provided for. Sweet *v.* Rechel, 159 U. S. 380, 401, 404. Besides, the first clause of the section prohibits the possession of the Commissioners for the District until the appropriation shall have been made and the money actually paid.

It is a serious inconvenience, and may, in some instances, result in injury to the private owner, that he may have to remain in suspense awaiting the appropriation by Congress; but this is an incident of the exercise of the power that cannot be wholly avoided, and against which there is no remedy, provided it be not prolonged for an unreasonable period. Shoemaker *v.* U. S., 147 U. S., 282, 321.

The same practical injury may follow the institution of proceedings by a private corporation as the result of protracted litigation; though, in such case, the land-owner would probably have a right of action for actual damages against the corporation in the event of its withdrawal therefrom.

4. The next proposition urged in support of the judgment is, that if the invalidity of either of sections 11 and 15, or both, be established, the act, as a whole, becomes inoperative, and must therefore be declared void.

We cannot agree to this contention. The controlling object of the act evidently is to provide a uniform plan for the extension of the streets and avenues of the city of Washington throughout the District of Columbia, and to rectify all existing subdivisions and bring them into conformity therewith. Ross *v.* Goodfellow, 23 Wash. Law Rep. 385.

Even if the whole of section 11 had been declared void the general object of the act would not be impaired, though important to the public interest in giving immediate effect to the operation of the act in the existing subdivisions, it might have been omitted along with its attendant provisions, without detriment to the general object to be accomplished.

What has been said of section 11 applies with greater reason to section 15, which has been declared invalid. That section might well have been omitted altogether. It is but one of the modes in which the property condemned may be in part paid for. If in fact the policy of assessing benefits in order to pay for the opening of streets is to be generally pursued, it would be more nearly just, as well as conducive to certainty of ascertainment, if the assessment should be made to follow upon the actual condemnation and opening of the street through a definite territory.

"It is only when different clauses of an act are so dependent upon each other that it is evident the legislature would not have enacted one of them without the other—as when the two things provided are necessary parts of one system—that the whole act will fall with the invalidity of one clause. When there is no such connection and dependency the act will stand, though different parts

of it are rejected." Huntington *v.* Worthen, 120 U. S. 102; Packet Co. *v.* Keokuk, 95 U. S. 80, 89; Poindexter *v.* Greenhorn, 114 U. S. 270; Reagan *v.* Farmers' L. & T. Co., 154 U. S. 362, 395.

5. The next and last objection taken to the act, as a whole, is that the record of the maps provided for therein amounts to a taking of the land, in the sense that it interferes with the enjoyment thereof by the owners to an injurious extent, beyond the power of Congress, without a provision for compensation. This question, though not decided, was to some extent considered in Ross *v.* Goodfellow, *supra*, where some of the probable inconveniences of the act were alluded to.

That the act is not an unauthorized encroachment upon the rights of the land-owners is, we think, settled by the principles enounced by the Supreme Court of the United States in the following cases: Shoemaker *v.* U. S., 147 U. S. 282, 321; Prosser *v.* North. Pac. R. R., 152 U. S. 59, 63, 65.

Similar statutes are quite common throughout the States of the Union, and have generally, if not universally, been upheld as valid exercises of legislative power. District of City of Pittsburg, 2 W. & S. 320; Moale *v.* Baltimore, 5 Md. 322; Steuart *v.* Baltimore, 7 Md. 508; Foster *v.* Scott, 136 N. Y. 575, 577.

The question whether the public necessity, or interest intended to be subserved by the act so far exceed its inconveniences to the individuals as to justify its enactment, was one for the determination of Congress.

Whilst we concur with the learned trial justice in his refusal to enter judgment in accordance with the verdict, we think that he went too far in declaring the whole act inoperative and void and dismissing the petition. The judgment will therefore be reversed, and the cause remanded, with direction to modify the judgment in so far as it dismisses the petition, and to reinstate the cause for further proceeding therein not inconsistent with this opinion. The costs incurred on this appeal by the parties respectively will be paid by them.

It is so ordered.

54 Mr. Chief Justice ALVEY filed an opinion dissenting in part from, and concurring in part with, the opinion of the majority of the court, as follows:

This proceeding was instituted under section 6 of the act of Congress of the 2d of March, 1893, entitled "An act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities," for the purpose of having condemned permanent rights of way for the public over all the land lying within the limits of a certain existing subdivision in section 1 of the plan for the extension of a permanent system of highways in this District, as provided for and directed by said act.

The plan for extension of this section 1 has been made and recorded in pursuance of the statute; and proceedings for condemnation and assessments were instituted and carried on to the
55 extent of the findings by the jury under the direction of the

court. But, at this stage of the proceeding, exceptions were taken to the proceedings, presenting questions as to the constitutionality of the statute, and as to the power of the court to proceed thereunder. These exceptions were sustained by the court, and the entire statute, and all the proceedings had thereunder, were declared null and void, and the proceedings for condemnation and assessments were dismissed.

The grounds for this decision are supposed to be apparent in the eleventh and fifteenth sections of the statute. There is certainly no sufficient ground for contending that any of the other sections and provisions of the act are amenable to constitutional objection. The most that can be urged against some of them is, that they may give rise to difficulties in their practical application. But this grows out of the nature and peculiar circumstances of the subject-matter of the act, and not out of any constitutional prohibition applicable to the case.

Section 11 of the act provides, "that where the use of a part only of any parcel or tract of land shall be condemned in such a proceeding, the jury in assessing the damages therefor shall take into consideration *the benefit the purpose for which it is taken may be to the owner or owners of such tract or parcel by enhancing the value of the remainder of the same*, and shall give their verdict accordingly, and the court may require in such case that the damages and the benefits shall be found and stated separately."

By section 15 it is provided, "that the amount awarded by said court as damages for each highway or reservation, or part thereof, condemned and established under this act, *shall be one-half assessed against the land benefited thereby*, and the other half shall be charged up to the revenues of the District of Columbia; that one-half of the amount awarded by said court as damages for each highway or reservation, or part thereof, condemned and established under this act, shall be charged upon the lands benefited by the laying out and opening of such highway or reservation, or part thereof, and the remainder of said amount shall be charged to the revenues of the District of Columbia. The same jury which shall assess the damages caused by the opening of any highway or reservation, or part thereof, or by the abandonment of any existing highway, or part thereof, shall ascertain and determine what property is thereby benefited, and shall assess against *each parcel which it shall find to be so benefited its proper proportional part* of the whole of said one-half of the damages: Provided, that in making such assessments for benefits the jury shall, as to any tract a part of which shall have been taken for such highway or reservation, or part thereof, *make due allowance for the amount, if any, which shall have been deducted from the value of the part taken on account of the benefit to the remainder of the tract.*" The section then provides, that when the assessment so made shall have been confirmed by the court, it *shall be a lien upon the land assessed*, and shall be collected as special improvement taxes in this District have been collected since February 21, 1871, and shall be payable in five equal annual installments, with interest at the rate of four per cent. per annum from

the date of the confirmation of the assessment by the court. This section further provides, that none of the expense for the improvements contemplated by the act "shall be chargeable to the Treasury of the United States, but such expense shall be paid solely out of the revenues of the District of Columbia." It is then provided, by section 16 of the act, "that when said court shall have assessed the damages to be paid as to any parcel of land the use for which shall have been condemned, or which shall have been injured by the abandonment of a previously existing highway, and there shall be no controversy as to the persons who are entitled to receive the same or as to the distribution of the same among them, said court shall decree such payment to be made, and upon presentation of a duly certified copy of such decree to the Treasurer of the United States, he shall report the same to Congress for consideration and action, and shall make such payment to the person or persons appearing by such decree to be entitled thereto, as Congress may provide." And by section 18 it is provided, "that whenever any final decree shall have been made by the court under the provisions of this act for the payment of the damages to the parties, or into the registry of the court, *and when the money has been appropriated and paid*, the Commissioners shall be entitled to take immediate possession of the parcel of land in regard to which said order of payment shall have been made, and the court shall enforce such right of possession by proper order and by process addressed to the marshal of the United States for the District of Columbia. In case the court shall enter judgment of condemnation in any case, and appropriation is not made by Congress for the payment of such award *within the period of six months*, Congress being in session for that time after such award, or for the period of six months after the meeting of the next session of Congress, *the proceedings shall be void*, and the land shall revert to the owners." That is to say, the condemnation proceedings shall be void, and the land remain as if it had never been condemned. The owner, therefore, is not to be, and, indeed, could not be, deprived of his land until compensation therefor is actually made, and if such compensation be not made within the reasonable time fixed by the statute, the condemnation proceedings are to be treated as wholly without effect.

1. The first question to be considered is, what will constitute just compensation for private property taken for public use, to gratify the requirement of the fifth amendment to the Constitution of the United States? This question is raised by the eleventh section of the act under consideration, which provides that where the use of only a part of any parcel or tract of land is taken for the improvement proposed, the benefit, if any, that may accrue therefrom to the remaining part, by which its value may be enhanced, shall be taken into consideration and allowed for in estimating the amount of just compensation for the part taken. This would seem to be fair and just, and is certainly supported by the great preponderance of authority in this country. Indeed, this is conceded by the learned justice below, upon the authority of Cooley on Constitutional Limita-

tions, page 700, and Dillon on Municipal Corporations, sec.
56 625. The property is taken for public use by virtue of the power of the eminent domain; and the question is, whether the owner of the land taken can exact full compensation therefor in money, *eo nomine*, irrespective of any and all special benefits conferred upon the remaining part of the tract or parcel of land left to him, by the use of the part appropriated by the public?

The learned justice below, while conceding the existence of the general principle by which benefits may be assessed, yet concluded that there was such difficulty in ascertaining the benefits with certainty and precision, and such uncertainty as to the time when such benefits would actually accrue to the remaining parts, that the provision for assessing such special benefits was null and void, and could not, therefore, be enforced. If this be the true construction, it necessarily strikes from the act the entire section 11, and leaves no provision for assessing special benefits as means of compensation. But I do not think such construction ought to be adopted. Every reasonable intendment should be indulged in order to maintain the act in its entirety, and if there be any reasonable mode of construction by which the entire act, and every provision thereof, may be sustained, as against a mere plausible construction tending to a contrary result, the former mode of construction must prevail. It is only when no other reasonable construction can be supported, that an act of Congress, or any part of it, can be declared to be unconstitutional and void, or invalid for any cause.

It has been very earnestly and strongly argued by counsel for the appellees that it is in contravention of the constitutional rights of the parties to allow the special benefits to the remaining parts of their lands to be taken into consideration in estimating just compensation for the parts taken; and many authorities have been cited in support of their contention. But the great weight of authority is against the contention: and it is only in deference to the arguments so earnestly pressed upon the court, that I think it proper to refer to some of the most generally accepted authorities upon the subject.

It is certainly true, as contended by counsel, that what will constitute just compensation for the land taken is a question for the courts, and not for the legislature, to determine. The constitutional requirement of just compensation to be made, excludes the power to take into account, as an element of such compensation, any supposed benefit that the owner of the land may receive in common with the other members of the same community, from the proposed improvement; but he is entitled, as against the public for whose use his property is taken, to receive a full and exact equivalent for the land taken from him, and that is just compensation. It is, indeed, for the legislature to determine what private property may be needed, and when it shall be taken for public use; those being questions, as said by the Supreme Court of the United States, of a political and legislative character; but when the taking is authorized, then the question of compensation is judicial. "It does not rest with the public, taking the property, through Congress or the legislature, to

say what compensation shall be paid, or even what shall be the rule of compensation. The Constitution has declared that just compensation shall be paid, and the ascertainment of that is a judicial inquiry." Monongahela Nav. Co. *v.* United States, 148 U. S., 327.

The principle by virtue of which the benefits and the injuries to the remaining part may be considered in estimating the just compensation for the part taken, is very clearly stated and illustrated by Mr. Justice Cooley, in his valuable work on Constitutional Limitations, at page 697, 6th edition. He there says: "When, however, only a portion of a parcel of land is appropriated, just compensation may, perhaps, depend upon the effect which the appropriation may have on the owner's interest in the remainder, to increase or diminish its value, in consequence of the use to which that taken is to be devoted, or in consequence of the condition in which it may leave the remainder in respect to convenience of use. If, for instance, a public way is laid out through a tract of land which before was not accessible, and if in consequence it is given a front, or two fronts, upon the street, which furnish valuable and marketable sites for building lots, it may be that the value of that which remains is made, in consequence of taking a part, vastly greater than the whole was before, and that the owner is benefited instead of damnified by the appropriation. Indeed, the great majority of streets in cities and villages are dedicated to the public use by the owners of lands, without any other compensation or expectation of compensation than the increase in market value which is expected to be given to such lands thereby; and this is very often the case with land for other public improvements, which are supposed to be of peculiar value to the locality in which they are made. But where, on the other hand, a railroad is laid out across a man's premises, running between his house and his outbuildings, necessitating, perhaps, the removal of some of them, or upon such a grade as to render deep cuttings or high embankments necessary, and thereby greatly increasing the inconveniences attending the management and use of the land, as well as the risks of accidental injuries, it will often happen that the pecuniary loss which he would suffer by the appropriation of the right of way would greatly exceed the value of the land taken, and to pay him that value only would be to make very inadequate compensation. It seems clear, therefore, that, in these cases, it is proper and just that the injuries suffered and the benefits received by the proprietor, as owner of the remaining portion of the land, should be taken into account in measuring the compensation. This, indeed, is generally conceded; but what injuries shall be allowed for, or what benefits estimated, is not always so apparent. The question, as we find it considered by the authorities, seems to be, not so much what the value is of that which is taken, but whether what remains is reduced in value by the appropriation, and if so, to what extent; in other words what pecuniary injury the owner sustained by a part of his land being appropriated."

The same general doctrine, with ample illustrations, is laid down by Judge Dillon, in his work on Municipal Corporations, vol. 2,

secs. 624 and 625; and the author there states the process by
57 which to estimate the benefits or injuries to the remaining portion of the parcel or tract, and how such estimate may affect the question of just compensation for the part taken.

Such, then, being the general principle, founded in justice and fairness, and adopted and asserted by courts and jurists of the highest authority, it would seem to be clear that it is competent to Congress, in legislating for this District, to require the benefits, if benefits there really be, to the remaining parcel of land, where a part only of a tract is taken, to be taken into consideration in estimating the just compensation for the part taken for the improvement, as provided in section 11 of the act of 1893. Whether there be benefits of a nature to be considered, and to what extent, are questions of a judicial character, and are exclusively for the court.

But it is strongly objected, and this objection was sustained by the court below, that the statute, while it authorizes proceedings for condemnation of property required for the improvement, makes no provision for the immediate opening and completion of the improvements from which benefits may be derived to the remaining parts of the tracts or parcels not appropriated. In other words, the benefits authorized to be taken into account, in adjusting the measure of compensation for the parts taken, is too remote and uncertain to form an element in estimating the present value of the land taken. That the owner of land to be affected by the proposed improvement should have all the certainty of benefit which the legislature can give; and the court and jurors who are to estimate the damages should be able to ascertain with certainty when the work is to be done and the cost of it, so that they may easily estimate the benefit to accrue therefrom, and that there should be nothing left to conjecture or speculation.

This objection does not seem to be well founded, when all the provisions of the statute are taken into view. In construing this statute, we must bear in mind the great object and purpose intended to be accomplished. The object to be accomplished is the extension of the present city limits, so as to conform to the original plan of the city of Washington, as projected by President Washington and those intrusted with the adoption of a plan and the laying out of the national city. The plan, while originally confined to a limited portion of the territory ceded by the State of Maryland, yet contemplated the ultimate extension of the city to the limits of the cession, if that should be found necessary. This extension of the city limits is a work of large and extensive proportions, and cannot be accomplished all at once, or within any very short time, but must, in the nature of the work, be done gradually as the public needs may require the improvement. Of this fact all land-owners within the District must be taken to have knowledge. The plan of extension is intended to subserve a great public object, indeed, necessity, and also to promote the private interests of property-holders along the lines of improvement. That some delay and inconvenience to adjoining proprietors may occur, are consequences that may reasonably be expected; but the plan of extension should not be defeated,

because some persons may suffer inconvenience, or even be made to suffer some consequential loss by the improvement projected or constructed. The statute has carefully provided the means by which the rights of individuals shall be protected in assessing benefits and estimating just compensation under section 11. The question whether benefits are too remote and contingent to be made an element in estimating just compensation, must be decided according to settled principles of law; and none that cannot be ascertained with reasonable certainty and precision will be assessed. Remote, contingent, or speculative benefits will not be assessed. The whole subject-matter is placed under the immediate direction and supervision of the court, and we are not to suppose that any benefits will be allowed to be assessed that are not justified by settled principles of law. There is, therefore, no reasonable ground for the apprehension of injustice by reason of the uncertainty of the benefits that may be assessed under section 11; nor is there any reasonable ground for apprehension of injury occasioned by delay after condemnation had and judgment thereon. Section 18 of the statute furnishes ample guard and protection against any such injury occasioned by delay in the payment of the money awarded on condemnation; and it is fair and reasonable to presume that the Commissioners will proceed in opening and making the streets and avenues without unnecessary delay, after condemnation and payment for the right of way; especially as they are forbidden, after the recording of the map of the plan of extension, "to improve, repair, or assume any responsibility in regard to any abandoned highway within the area covered by such map." And the act, by express terms in its second section, provides that, "in order to enable the Commissioners to proceed *speedily and efficiently* to carry out the purposes of this act," they are authorized to appoint commissioners to supervise and direct the execution of the work. No unnecessary delay, therefore, is contemplated, and none should be presumed as likely to occur.

2. With respect to the fifteenth section of the act, different considerations are presented. The power of assessment for benefits attempted to be delegated by that section, in order to raise the one-half of the cost of the improvement, can only be exercised by virtue of the taxing power of the Government. The authority attempted to be given by the act is, that of the amount awarded by the court as damages for each highway or reservation, or part thereof, condemned and established under this act, there shall be one-half assessed against the land benefited thereby, and the other half shall be charged up to the revenues of the District of Columbia. This power of assessment for benefits, as given in this section of the act, is without territorial limitation, and may extend into other subdivisions, and the same lots or parcels of land may be subject to assessments by other juries thereafter called upon to make assessments upon land benefited. This would be contrary to justice, and would contravene an established principle of such local assessments. Such assessments should be so apportioned and levied

as to produce uniformity in the burdens imposed thereby,
58 within the taxing district, as nearly as possible. Judge Cooley, stating the result of all the well-considered cases upon the subject, says, that, "as to all taxation apportioned upon property, there must be taxing districts, and within these districts the rule of absolute uniformity must be applicable. A State tax is to be apportioned through the State, a county tax through the county, a city tax through the city; while in the case of a local improvement benefiting in a special and peculiar manner some portion of the State, or of the county or city, it is competent to arrange a special taxing district, within which the expense shall be apportioned." Const. Lim. 610. Again, the author says: "Even within this district the assessment is sometimes made by some other standard than that of value; and it is evident that if it be just to create the taxing district with reference to special benefits, it would be equally just and proper to make the taxation within the district have reference to the benefit each parcel of property receives, rather than to its relative value. The opening or paving of a street may increase the value of the property upon or near it; and it may be just that all such property should contribute to the expense of the improvement; but it by no means follows that each parcel of the property will receive from the improvement a benefit in proportion to the previous value. One lot upon the street may be greatly increased in value, another at a little distance may be but slightly benefited; and if no constitutional provision interferes, there is consequently abundant reason why the tax levied within the taxing district should have reference, not to value, but to benefit." *Id.* 612.

The question of special benefit, and the property to which it extends, is clearly one of fact. And being a question of fact, the legislature may commit to commissioners the ascertainment of the sum to be assessed, and the district within which the assessments shall be made. But it is not bound so to delegate the power to determine these questions; it may determine both of such questions for itself, and when so determined the decision is final and conclusive. Spencer *v.* Merchant, 125 U. S. 345.

In this case, while the act, by its fifteenth section, provides that one-half of the amount awarded as damages for each highway or reservation, or part thereof, condemned and established, shall be assessed against the land benefited thereby, it entirely fails to define or prescribe the district or territory within which the benefits may be assessed. Whether confined to the particular subdivision in which the highway or street may be condemned and established, or whether such benefits may be assessed against land beyond the limits of such subdivision along the line of such improvement, as extended into or through adjoining subdivisions, the act is entirely silent. Nor is there any provision conferring authority upon commissioners, or upon the court, to define such taxing district. And the act wholly fails to provide how the assessment shall be apportioned—whether with reference to the existing value of the land, or to the amount of benefit only that may be derived from the improvement when made. The omission of these essential provisions ren-

ders the power of assessment, under this fifteenth section, impossible of execution, according to settled principles of law. The provision authorizing the assessments under the fifteenth section, is entirely too indefinite and uncertain to furnish a reasonable and safe criterion for assessing the one-half of the award of damages against the property supposed to be benefited. This omission or defect in the act, however, does not render invalid the entire act. The particular provision is nugatory for the want of certainty; but all the other provisions of the act are valid, according to my opinion. The defect in the act can easily be removed, by an amendatory act of Congress.

By the order of the court below dismissing the proceedings, it is recited, that, upon argument, "it appearing to the court that the act of Congress under which this proceeding is instituted, is unconstitutional and void, for the reasons stated in the opinion of this court filed, it is ordered and adjudged by the court, that the verdict rendered herein by the jury, be and the same is set aside, and that the petition herein is hereby dismissed."

This order, in my opinion, should be reversed, and the cause be remanded to the court below, so that the verdict of the jury may be set aside, and that the appellants be allowed to move for such other and further proceedings in the premises as they may be advised to be proper.

59 *Memorandums.*

1896, July 11.—Appeal by District of Columbia.
" " " —Appeal by respondents.
" " " —Appeal allowed.
" " " —Bond of respondents filed and approved.

60 In the Supreme Court of the District of Columbia.

In Re Suburban Subdivision Known as Ingleside Subdivision by Chapin Brown, in the District of Columbia, Included within Section 1 of the Plan for the Extension of a Permanent System of Highways in the District of Columbia. No. 453, District Court.

The President of the United States to the District of Columbia, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal entered in the supreme court of the District of Columbia on the 11th day of July, 1896, wherein Charles H. Bauman, John H. Jolly, Charles G. Shoemaker, Annie H. Panghorn, Edmund N. Woodruff, Herbert H. Kimball, James H. Hensley, and Frank B. Noyes are appellants and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 11 day of July, in the year of our Lord one thousand eight hundred and ninety-six.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 13 day of July, 1896.

S. T. THOMAS,
Attorney for Appellee.

[Endorsed:] District court. No. 453. *In re* Ingleside subdivision. Citation. Issued July 11, 1896. Served cop- of the within citation on —— ——. —— ——, marshal. Chapin Brown *et al.*, attorney- for appellant-.

61 *Waiver of Citation by Appellees.*

Filed July 24, 1896.

In the Supreme Court of the District of Columbia, Sitting as a District Court of the United States.

In Re Subdivision Known as Ingleside Subdivision by Chapin Brown, in the District of Columbia, in "Section One" of the Map of Permanent System of Highways. No. 453, District Court.

The issuance and service of a citation on the appeal entered in the above-entitled cause by the District of Columbia is hereby waived by the appellees.

CHAPIN BROWN,
NATH'L WILSON,
Proctors for Appellees.
A. A. BIRNEY,
Att'y for U. S.

62 *Stipulation to Embrace Opinions of the Court of Appeals and of Justice Cox in the Record.*

Filed September 17, 1896.

In the Supreme Court of the District of Columbia, Sitting as a District Court of the United States.

In Re Subdivision Known as Ingleside Subdivision by Chapin Brown, in the District of Columbia, in "Section One" of the Map of Permanent System of Highways. No. 453.

It is hereby stipulated by and between the attorney for the District of Columbia, the attorney for the United States, and the attorneys for the appellant owners in the above-entitled case that there shall be embraced in the record on appeal in this case the opinion

of the Court of Appeals, District of Columbia, and the opinion of Chief Justice Alvey in the case of The District of Columbia, appellant, *vs.* Charles H. Armes *et al.*, numbered 552 (January term, 1896), in that court and filed in the office of the clerk of the supreme court of the District of Columbia, in the case entitled *In re* subdivision known as Dennison and Leighton's subdivision, numbered 419 upon the district court docket; also opinion of Justice Cox filed in last-mentioned case January 27th, 1895.

S. T. THOMAS,
A. B. DUVALL,
Attorneys for the District of Columbia.
A. A. BIRNEY,
Attorney for the United States.
CHAPIN BROWN,
ARTHUR H. O'CONNOR,
NATHANIEL WILSON,
Attorneys for Appellant Owners.

63 In the Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the foregoing pages, numbered from 1 to 62, inclusive, to be true copies of originals in cause entitled "*In re* surburban subdivision known as Ingleside subdivision by Chapin Brown, in the District of Columbia, included within section 1 of the plan for the extension of a permanent system of highways in the District of Columbia, No. 453, district court," on file and of record in said court, as per stipulation of counsel.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 7th day of September, A. D. 1896.

JOHN R. YOUNG, *Clerk.*

64 [Endorsed:] District of Columbia supreme court. No. 626: Charles H. Bauman *et al.*, appellants, *vs.* John W. Ross *et al.*, Commissioners of the District of Columbia; and No. 627: John W. Ross *et al.*, Commissioners of the District of Columbia, appellants, *vs.* Charles H. Bauman *et al.* Court of Appeals, District of Columbia. Filed Sep. 23, 1896. Robert Willett, clerk.

65 TUESDAY, *September 29th, A. D.* 1896.

CHARLES H. BAUMAN, JOHN H. JOLLY, CHARLES G. SHOEMAKER, ANNIE H. PANGHORN, EDMUND N. WOODRUFF, HERBERT H. KIMBALL, JAMES H. HENSLEY, and FRANK B. NOYES, Appellants,
vs.
THE DISTRICT OF COLUMBIA } No. 626.

and

THE DISTRICT OF COLUMBIA, Appellant,
vs.
CHARLES H. BAUMAN, JOHN H. JOLLY, CHARLES G. SHOEMAKER, ANNIE H. PANGHORN, EDMUND N. WOODRUFF, HERBERT H. KIMBALL, JAMES H. HENSLEY, and FRANK B. NOYES. } No. 627.

Upon motion of Mr. Nathaniel Wilson, of counsel, it is ordered by the court that the printing of the record in the above-entitled causes be dispensed with, as per agreement of counsel; whereupon these causes were submitted to the consideration of the court on the transcript of record filed herein.

66 Court of Appeals of the District of Columbia, April Term, 1896.

CHARLES H. BAUMAN, JOHN H. JOLLY, CHARLES G. SHOEMAKER, ANNIE H. PANGHORN, EDMUND N. WOODRUFF, HERBERT H. KIMBALL, JAMES H. HENSLEY, and FRANK B. NOYES, Appellants,
vs.
JOHN W. ROSS, GEORGE TRUESDELL, and CHARLES F. POWELL, Commissioners of the District of Columbia, } No. 626.

and

JOHN W. ROSS, GEORGE TRUESDELL, and CHARLES F. POWELL, Commissioners of the District of Columbia, Appellants,
vs.
CHARLES H. BAUMAN *et al.* } No. 627.

Opinion.

In the case of The District of Columbia, appellant, against Charles H. Armes and others, No. 552, January term, 1896, this court had occasion to consider the questions of law which are now here raised by the appeal and cross-appeal from the decree of the court below set forth in the record. On the authority of that case, the decree herein of the supreme court of the District of Columbia, holding a

district court of the United States for said District, must be affirmed with costs; and it is so ordered.

By the court:

R. H. ALVEY,
Ch. Justice.

September 29, 1896.

67 Court of Appeals of the District of Columbia, April Term, 1896.

CHARLES H. BAUMAN, JOHN H. JOLLY, CHARLES G. SHOEmaker, Annie G. Panghorn, Edmund N. Woodruff, Herbert H. Kimball, James H. Hensley, and Frank B. Noyes, Appellants,
vs.
JOHN W. ROSS, GEORGE TRUESDELL, and CHARLES F. POWELL, Commissioners of the District of Columbia. } No. 626.

and

JOHN W. ROSS, GEORGE TRUESDELL, and CHARLES F. Powell, Commissioners of the District of Columbia, Appellants,
vs.
CHARLES H. BAUMAN, JOHN H. JOLLY, CHARLES G. SHOEmaker, Annie G. Panghorn, Edmund N. Woodruff, Herbert H. Kimball, James H. Hensley, and Frank B. Noyes. } No. 627.

Appeals from the supreme court of the District of Columbia, holding a district court of the United States for said District.

The appeal and the cross-appeal in the above-entitled cases came on to be heard on the transcript of record from the supreme court of the District of Columbia, holding a district court of the United States for said District, and were argued by counsel; on consideration whereof it is now here ordered and adjudged by this court that the decree of the said supreme court of the District of Columbia, sitting as a district court of the United States for said District in the above-entitled causes, be, and the same is hereby, affirmed with costs.

Per MR. CHIEF JUSTICE ALVEY.

September 29, 1896.

68 WEDNESDAY, *September 30th, A. D.* 1896.

CHARLES H. BAUMAN, JOHN H. JOLLY, CHARLES G. SHOEmaker, Annie H. Panghorn, Edmund N. Woodruff, Herbert H. Kimball, James H. Hensley, and Frank B. Noyes, Appellants,
vs.
JOHN W. ROSS, GEORGE TRUESDELL, and CHARLES F. POWELL, Commissioners of the District of Columbia. } No. 626.

On motion of Messrs. Nath'l Wilson and A. H. O'Connor, of counsel for the appellants in the above-entitled cause, it is ordered

by the court that Charles H. Bauman, John H. Jolly, Charles G. Shoemaker, Annie H. Panghorn, Edmund N. Woodruff, Herbert H. Kimball, James H. Hensley, and Frank B. Noyes, appellants, be allowed an appeal to the Supreme Court of the United States on giving bond in the sum of two hundred and fifty dollars.

69 JOHN W. ROSS, GEORGE TRUESDELL, and CHARLES F. POWELL, Commissioners of the District of Columbia,

vs.

CHARLES H. BAUMAN, JOHN H. JOLLY, CHARLES G. SHOEMAKER, ANNIE H. PANGHORN, EDMUND N. WOODRUFF, HERBERT H. KIMBALL, JAMES H. HENSLEY, and FRANK B. NOYES. } No. 627.

On motion of Mr. S. T. Thomas, of counsel for the appellants in the above-entitled cause, it is ordered by the court that John W. Ross, George Truesdell, and Charles F. Powell, Commissioners of the District of Columbia, appellants, be allowed an appeal to the Supreme Court of the United States on giving bond in the sum of two hundred and fifty dollars.

70 Know all men by these presents that we, Charles H. Bauman, as principal, and Frank E. Smith, as surety, are held and firmly bound unto John W. Ross, George Truesdell, and Charles F. Powell, Commissioners of the District of Columbia, in the full and just sum of two hundred and fifty dollars ($250.00), to be paid to the said John W. Ross, George Truesdell, and Charles F. Powell, Commissioners of the District of Columbia, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this eighth day of October, in the year of our Lord one thousand eight hundred and ninety six.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between Charles H. Bauman and others against The Commissioners of the District of Columbia, a judgment or decree was rendered against the said Charles H. Bauman and others, and the said Charles H. Bauman and others having been allowed an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said John W. Ross, George Truesdell, and Charles F. Powell, Commissioners of the District of Columbia, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Charles H. Bauman and the other appellants shall prosecute their appeal to effect and answer all costs if they fail to make —

plea good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES H. BAUMAN. [SEAL.]
FRANK E. SMITH. [SEAL.]

Sealed and delivered in the presence of—
SAMUEL J. SMITH.

Bond satisfactory.

S. T. THOMAS, *Att'y D. C.*

Approved by—
R. H. ALVEY,
Chief Justice.

[Endorsed:] No. 626. Charles H. Bauman *et al. vs.* John W. Ross *et al.*, Comm'rs D. C. Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Oct. 9, 1896. Robert Willett, clerk.

71 UNITED STATES OF AMERICA, *ss:*

To John W. Ross, George Truesdell, and Charles F. Powell, Commissioners of the District of Columbia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Charles H. Bauman, John H. Jolly, Charles G. Shoemaker, Annie H. Panghorn, Edmund N. Woodruff, Herbert H. Kimball, James H. Hensley, and Frank B. Noyes are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 9th day of October, in the year of our Lord one thousand eight hundred and ninety-six.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service acknowledged October 9th, 1896.
S. T. THOMAS, *Att'y D. C.*

[Endorsed:] Court of Appeals, District of Columbia. Filed Oct. 9, 1896. Robert Willett, clerk.

72 Know all men by these presents that we, John W. Ross, George Truesdell, and Charles F. Powell, Commissioners of the District of Columbia, as principals, and The Fidelity and Deposit Company of Maryland, a corporation of Baltimore city, Mary-

land, as surety, are held and firmly bound unto Charles H. Bauman, John H. Jolly, Charles G. Shoemaker, Annie H. Panghorn, Edmund N. Woodruff, Herbert H. Kimball, James H. Hensley, and Frank B. Noyes in the full and just sum of two hundred and fifty (250) dollars, to be paid to the said obligees, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of October, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between John W. Ross, George Truesdell, and Charles F. Powell, Commissioners of the District of Columbia, and said obligees, a judgment was rendered against the said John W. Ross, George Truesdell, and Charles F. Powell, Commissioners, etc., and the said John W. Ross, George Truesdell, and Charles F. Powell, Commissioners, etc., having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said obligees and citing and admonishing them and each of them to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said John W. Ross, George Truesdell, and Charles F. Powell shall prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—

JOHN W. ROSS. [SEAL.]
GEO. TRUESDELL. [SEAL.]
CHAS. F. POWELL. [SEAL.]
THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND, [SEAL.]
By WILLIAM A. GORDON, *Of Local Board.* [SEAL.]

[Seal of Fidelity & Deposit Company.]

Witness as to Commissioners D. C.:

WILLIAM TINDALL.

Attest: J. SPRIGG POOLE, *Ag't.*

Approved by—

R. H. ALVEY,
Ch. Justice.

[Endorsed:] No. 627. John W. Ross *et al.*, Comm'rs D. C., *vs.* Chas. H. Bauman *et al.* Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Oct. 6, 1896. Robert Willett, clerk.

73 UNITED STATES OF AMERICA, *ss:*

To Charles H. Bauman, John H. Jolly, Charles G. Shoemaker, Annie H. Panghorn, Edmund N. Woodruff, Herbert H. Kimball, James H. Hensley, and Frank B. Noyes, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein John W. Ross, George Truesdell, and Charles F. Powell, Commissioners of the District of Columbia, — appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 6th day of October, in the year of our Lord one thousand eight hundred and ninety-six.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

[Endorsed:] Oct. 6, '96. Service of citation waived for all the parties for whom we appear. Chapin Brown, Arthur H. O'Connor, Nath'l Wilson. Court of Appeals, District of Columbia. Filed Oct. 7, 1896. Robert Willett, clerk.

74 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing is a true and complete transcript of the record and all proceedings in said Court of Appeals in the cases of Charles H. Bauman *et al.*, appellants, *vs.* John W. Ross *et al.*, Commissioners of the District of Columbia, and John W. Ross *et al.*, Commissioners of the District of Columbia, appellants, *vs.* Charles H. Bauman *et al.*, Nos. 626 & 627, April term, 1896, as the same remains upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 10th day of October, A. D. 1896.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.